

EXPLANATORY STATEMENT

Issued by the authority of the Minister for the Environment and Water

Nature Repair Act 2023

Nature Repair Rules 2024

Purpose

The purpose of the *Nature Repair Rules 2024* (NR Rules) is to prescribe the operational and administrative detail of the Nature Repair Market scheme, enabled by the *Nature Repair Act 2023* (NR Act). These rules primarily relate to matters such as registration of projects, issuing of certificates, publishing of information on the Register and operational matters such as reporting, auditing and notifications.

Legislative authority

The NR Rules are made under subsection 237(1) of the NR Act.

Subsection 237(1) of the NR Act provides that the Minister may, by legislative instrument, make rules prescribing matters required or permitted by the NR Act to be prescribed by the rules or necessary or convenient to be prescribed for carrying out or giving effect to the NR Act.

The NR Act contains a number of provisions that set the parameters of the Minister's rule-making power and provide examples of the kinds of things for which the Minister may make provision in the rules. Where relevant, these provisions are identified in this explanatory statement.

Background

The NR Act establishes the framework for a voluntary national market (the Nature Repair Market) to deliver improved biodiversity outcomes. Eligible landholders who undertake projects that enhance or protect biodiversity in native species will be able to receive a tradeable certificate (a biodiversity certificate) that will be tracked through a national register. The Nature Repair Market is intended to facilitate private investment in biodiversity, including where carbon storage projects have biodiversity co-benefits.

The NR Act provides that the Nature Repair Market is primarily administered by the Clean Energy Regulator (the Regulator).

The NR Act:

- promotes investment in long-term repair and protection of biodiversity in native species in Australia (including its external territories) – on land or in waters;
- creates a nationally consistent framework to describe and measure biodiversity outcomes;
- enables biodiversity certificates describing biodiversity projects to be created, purchased, transferred, claimed, used and publicly tracked. Under the Nature Repair Market scheme, each project can be issued one certificate. Consistent, verifiable and publicly available information on projects and certificates will allow purchasers to make informed decisions;

- requires project proponents to monitor and report on their project, including the biodiversity outcome;
- encourages participation in the market by all persons, including Aboriginal persons and Torres Strait Islanders;
- ensures that native title holders have the final say on whether, and what kind of, biodiversity projects are carried out on or in native title areas. This promotes the engagement and cooperation of Aboriginal persons and Torres Strait Islanders in the enhancement or protection of biodiversity in native species in Australia;
- establishes project assurance and compliance systems to provide certainty to the market, including providing appropriate and effective integrity measures to ensure the scheme only rewards genuine and verifiable biodiversity protection or enhancement. Certificates are only issued for biodiversity protection or enhancement that would not normally have occurred and, therefore, provides a genuine environmental benefit;
- establishes the Nature Repair Committee (the Committee). The Committee consists of independent experts whose functions include advising and providing recommendations to the Minister on the development of methodology determinations and biodiversity assessment instruments;
- establishes a public register of all registered biodiversity projects and certificates to allow for tracking of project progress and citizen oversight.

The Nature Repair Market allows for market innovation and enables new issues to be addressed as the market evolves. The framework recognises that landholders have different circumstances, interests and aspirations, and encourages participation and increased supply.

Impact and Effect

The NR Act is to be supported by legislative instruments in the form of rules, biodiversity assessment instruments, and methodology determinations. These instruments will contain the operational detail necessary for the establishment and operation of the Nature Repair Market.

The NR Rules set out operational requirements relating to:

- the registration of biodiversity projects, including variation and cancellation of registration;
- excluded biodiversity projects;
- variation and cessation of methodology determinations;
- issuing of biodiversity certificates;
- publication of information, and record keeping;

- reporting, auditing and notifications;
- matters relating to the Biodiversity Market Register, including Register accounts;
- review of decisions;
- identification procedures and documentation.

The NR Rules also incorporate the *Nature Repair (Committee) Rules 2024*, which are consequentially repealed by the NR Rules.

Pre-conditions to making the NR Rules

Subsection 33(2) of the NR Act provides that in deciding whether to make rules for the purposes of subsection 33(1) specifying a particular kind of project as an excluded biodiversity project, the Minister must have regard to whether there is a material risk that the kind of project will have a material adverse impact on one or more of the following:

- the availability of water;
- biodiversity (other than the kinds of biodiversity to be addressed by the project);
- employment;
- the local community;
- if there is a local community of Aboriginal persons, or Torres Strait Islanders, who have a connection to the project area—that community;
- land access for agricultural production;
- the environment.

The Minister has had regard to these matters before deciding to make rules for the purpose of subsection 33(1) of the NR Act specifying that a biodiversity project that involves the planting of a species in an area where it is a known weed species is an excluded biodiversity project that cannot be registered under the NR Act. In particular, the Minister considered that there would be a material risk that allowing the registration of such projects would have a material adverse impact on the environment and biodiversity (other than the kinds of biodiversity to be addressed by the project).

The NR Act does not specify any other conditions that need to be met before the NR Rules can be made.

Consultation

The Department of Climate Change, Energy, the Environment and Water (the Department) has undertaken extensive consultation relevant to the NR Rules. Key consultation points were:

- Consultation on the design of the Nature Repair Market in late 2022;
- Consultation on an exposure draft of the Nature Repair Bill in early 2023; and
- Consultation on a discussion paper that set out proposed details of the NR Rules from 2 September to 8 October 2024.

Across the first two consultation processes, the Department received more than 400 written submissions, and held consultation meetings and one on one discussions with landholders, First Nations groups and representatives, and industry participants.

The Department received 96 submissions in response to the rules discussion paper, which was widely distributed to stakeholders, and publicly available on the Department's website. Most respondents agreed with the proposed approaches in the discussion paper in relation to the NR Rules included in the paper.

The Office of Impact Analysis confirmed that an impact analysis is not required for the NR Rules.

No specific consultation was undertaken during the development of the *Nature Repair (Committee) Rules 2024*, which are incorporated into Part 19 of the NR Rules, due to it being minor and machinery in nature.

Details and operation

Details of the NR Rules are set out in [Attachment A](#).

The NR Rules commence on the day after the instrument is registered on the Federal Register of Legislation.

Other matters

The NR Rules are a legislative instrument for the purposes of the *Legislation Act 2003*.

The NR Rules are 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](#).

Details of the *Nature Repair Rules 2024*

Part 1 – Preliminary

Section 1 – Name

2. Section 1 provides that the name of the instrument is the *Nature Repair Rules 2024* (the NR Rules).

Section 2 – Commencement

3. Section 2 provides that the NR Rules commence on the day after the instrument is registered on the Federal Register of Legislation.
4. The note below the table provides that the table relates only to the provisions of the instrument as originally made. It will not be amended to deal with any later amendments of the instrument. The purpose of this note is to clarify that the commencement of any subsequent amendments is not reflected in the table.
5. Subsection 2(2) clarifies that any information in column 3 of the table is not part of the instrument. Information may be inserted in this column, or information in it may be edited, in any published version of the instrument. For example, the date the instrument commenced will be inserted in this column once that has occurred.

Section 3 – Authority

6. Section 3 provides that the NR Rules are made under the *Nature Repair Act 2023* (NR Act).

Section 4 – Schedule 2

7. Section 4 provides that the instruments specified to be amended or repealed as set out in a Schedule 2 of the NR Rules has effect according to the terms of that Schedule.
8. Schedule 2 of the NR Rules repeals the *Nature Repair (Committee) Rules 2024* (the Committee Rules). The provisions of the Committee Rules are incorporated into Part 19 of the NR Rules.

Section 5 – Definitions

9. Section 5 would define key terms used in the NR Rules. This includes some ‘signpost’ definitions that refer readers to the sections of the NR Rules in which terms are substantively defined.
10. Some key definitions in the NR Rules relate to the verification of a person’s identity. The term *identity evidence*, for a person, is defined to mean the person’s digital identity (if the person’s identity is to be verified by digital means) or in any other case the required documents under Division 1 of Part 21 of the NR Rules (which sets out identification process for individuals, trusts, and persons that are not an individual or a trust (for example, a body

corporate)). The *digital identity* of an individual is defined to mean a distinct electronic representation of the individual that enables the individual to be sufficiently distinguished when interacting online with services. An *identity service provider* is defined to mean an accredited participant in the system known as the Australian Government Digital Identity System, or that system continuing in existence with a different name, that provides a service that generates, manages, maintains or verifies information relating to the identity of an individual. A *document verification service* means the Australian Government Document Verification Service (or that service continuing in existence with a different name).

11. Additional key definitions in the NR Rules relate to the Register and the keeping of and dealing with Register accounts. An *authorised representative* of a person for a Register account kept in the name of the person is defined to be an individual that the person who holds the Register account has nominated (where the nomination has not been revoked) either in the initial request to open the Register account, or subsequently.
12. Other relevant terms relating to the Register are: *Register account*, *account number*, and *holder* of a Register account. These definitions are included as ‘signpost’ definitions, which refer to the relevant provisions of the NR Rules that contain the substantive definitions for the terms.
13. The term *geospatial data*, for an area, is defined to mean data that describes the locations and characteristics of the features of the area on the Earth’s surface and provides details about those features. This definition is primarily relevant to an application for the registration of a biodiversity project, which must include geospatial data in relation to the project area. Geospatial data can also be provided to satisfy requirements relating to a request to publish on the Register the extent to which a registered biodiversity project area overlaps with a project area that is registered under a related scheme.
14. The note at the top of section 5 of the NR Rules directs the reader to other key terms that are used in the NR Rules but that are defined in the NR Act.

Section 6 – Crown lands Ministers

15. Section 7 of the NR Act defines the term *Crown lands Minister* to mean:
 - in relation to a State—the Minister of the State who, under the rules, is taken to be the Crown lands Minister of the State; or
 - in relation to the Northern Territory—the Minister of the Northern Territory who, under the rules, is taken to be the Crown lands Minister of the Northern Territory; or
 - in relation to the Australian Capital Territory— the Minister of the Australian Capital Territory who, under the rules, is taken to be the Crown lands Minister of the Australian Capital Territory; or

- in relation to a Territory other than the Northern Territory or the Australian Capital Territory—the person who, under the rules, is taken to be the Crown lands Minister of the Territory.
16. Section 6 of the NR Rules has the effect of specifying, for each State and Territory (including external territories), the Crown lands Minister for the purposes of the definition of *Crown lands Minister* in section 7 of the NR Act:
- New South Wales – the Crown lands Minister for New South Wales is the Minister who is responsible for administering the *Crown Land Management Act 2016* (NSW) in respect of a particular area of land;
 - Victoria – the Crown lands Minister for Victoria is the Minister who is responsible for administering, in respect of a particular area of land, whichever of the following legislation applies to the land: the *Land Act 1958* (Vic); the *Crown Land (Reserves) Act 1978* (Vic); or the *Forests Act 1958* (Vic);
 - Queensland – the Crown lands Minister for Queensland is the Minister who is responsible for administering the *Land Act 1994* (QLD) in respect of a particular area of land.
 - Western Australia – the Crown lands Minister for Western Australia is the Minister who is responsible for administering the *Land Administration Act 1997* (WA);
 - South Australia – the Minister who is responsible for administering the *Crown Land Management Act 2009* (SA);
 - Tasmania – the Crown lands Minister for Tasmania is both the Minister responsible for administering the *Crown Lands Act 1976* (Tas) and the Minister responsible for administering the *Nature Conservation Act 2002* (Tas) (except for Part 4 of that Act);
 - Australian Capital Territory – the Crown lands Minister for the Australian Capital Territory is the Minister who is responsible for administering the *Land Titles Act 1925* (ACT);
 - Northern Territory – the Crown lands Minister for the Northern Territory is the Minister who is responsible for administering the *Crown Lands Act 1992* (NT) (except for section 79 of that Act);
 - Norfolk Island – the Crown lands Minister for Norfolk Island is the Minister who is responsible for administering the *Norfolk Island Act 1979* (Cth);
 - Australian Antarctic Territory – the Crown lands Minister for the Australian Antarctic Territory is the Minister who is responsible for administering the *Australian Antarctic Territory Act 1954* (Cth);

- Coral Sea Islands Territory – the Crown lands Minister for the Coral Sea Islands Territory is the Minister who is responsible for administering the *Coral Sea Islands Act 1969* (Cth);
- Jervis Bay Territory – the Crown lands Minister for Jervis Bay Territory, and the external territories, is the Minister who is responsible for administering the *Jervis Bay Territory Acceptance Act 1915* (Cth);
- Territory of Ashmore and Cartier Islands – the Crown lands Minister for the Territory of Ashmore and Cartier Islands is the Minister who is responsible for administering the *Ashmore and Cartier Islands Acceptance Act 1933* (Cth);
- Territory of Christmas Island – the Crown lands Minister for the Territory of Christmas Island is the Minister who is responsible for administering the *Christmas Island Act 1958* (Cth);
- Territory of Cocos (Keeling) Islands – the Crown lands Minister for the Territory of Cocos (Keeling) Islands is the Minister who is responsible for administering the *Cocos (Keeling) Islands Act 1955* (Cth);
- Territory of Heard Island and McDonald Islands – the Crown lands Minister for the Territory of Heard Island and McDonald Islands is the Minister who is responsible for administering the *Heard Island and McDonald Islands Act 1953* (Cth);

17. Subsection 6(2) clarifies that if more than one Minister administers an Act mentioned for New South Wales, Victoria or Queensland, then the Crown lands Minister in respect of a particular area of land will be the Minister responsible for the NR Act that relates to a particular area of land.

Section 7 – Information required to be included in project plans

18. A registered biodiversity project will be required to have a project plan if the methodology determination that covers the project requires a project plan for the project.
19. The project plan must set out how the project is intended to be carried out, how the project is intended to achieve the biodiversity outcome for the project, and must be consistent with the methodology determination that covers the project (see definition of *project plan* in section 7 of the NR Act). In addition, paragraph (d) of the definition of *project plan* requires that a project plan must include such information as is specified in the rules.
20. Section 7 of the NR Rules is made for the purpose of paragraph (d) of the definition of *project plan* and requires that the project plan for a registered biodiversity project must contain the following information:
- if a unique identifier has been assigned for the biodiversity project that the project plan relates to—the unique identifier;
 - the name or proposed name of the project;

- a description of the project;
- the date of the project plan;
- the name of the project proponent, or the proposed project proponent, for the project;
- if there are multiple project proponents, or proposed project proponents, for the project—the nominee, or proposed nominee, in relation to the project;
- information about the roles and responsibilities of each person involved in the implementation of the project under the project plan;
- the limitations and assumptions applied in the development of the project plan;
- the details of the person or persons who prepared the project plan.

Section 8 – Authorities and bodies that are not statutory authorities

21. The NR Act uses the term *statutory authority* in relation to:

- the concept of *Crown land* – which is defined to mean land that is the property of the Commonwealth, a State or a Territory or a Commonwealth, State or Territory statutory authority (see definition of *Crown land* in section 7 of the NR Act);
- the concept of who is an *eligible interest holder* in relation to land – where Torrens land or Crown land is also land rights land (and is not an exclusive possession native title area) and the land is held by a Commonwealth statutory authority – the Minister who administers the NR Act that establishes the statutory authority is an eligible interest holder for that land (see subsections 89(6) and 90(6) of the NR Act).

22. Section 7 of the NR Act defines *statutory authority* of the Commonwealth, a State or a Territory to mean an authority or body (including a corporation sole) established by or under a law of the Commonwealth, the State or the Territory (other than a general law allowing incorporation of a company or body corporate), but does not include:

- an Aboriginal Land Trust established under the *Aboriginal Land Rights (Northern Territory) Act 1976*; or
- the Wreck Bay Aboriginal Community Council established by the *Aboriginal Land Grant (Jervis Bay Territory) Act 1986*; or
- a corporation registered under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006*; or
- an authority or body that is established by or under a law of the Commonwealth, a State or a Territory, and is specified in the rules.

23. Section 8 of the NR Rules is made for the purposes of subparagraph (d)(ii) of the definition of *statutory authority* and prescribes additional authorities or bodies that are excluded from being a *statutory authority* for the purposes of the NR Act. These authorities or bodies are:
- an Aboriginal Land Council within the meaning of the *Aboriginal Land Rights Act 1983* (NSW); and
 - a trust incorporated under the *Aboriginal Lands Act 1970* (Vic); and
 - a land trust within the meaning of the *Aboriginal Land Act 1991* (Qld); and
 - a land trust within the meaning of the *Torres Strait Islander Land Act 1991* (Qld); and
 - the Aboriginal Lands Trust established by the *Aboriginal Affairs Planning Authority Act 1972* (WA); and
 - the Aboriginal Lands Trust within the meaning of the *Aboriginal Lands Trust Act 2013* (SA); and
 - the Anangu Pitjantjatjara Yankunytjatjara within the meaning of the *Anangu Pitjantjatjara Yankunytjatjara Land Rights Act 1981* (SA); and
 - the Maralinga Tjarutja within the meaning of the *Maralinga Tjarutja Land Rights Act 1984* (SA); and
 - the Aboriginal Land Council of Tasmania established under the *Aboriginal Lands Act 1995* (Tas).

Section 9 – Electronic notices transmitted to Regulator

24. Section 9 of the NR Act clarifies the meaning of the phrase *electronic notice transmitted to the Regulator* for the purposes of the NR Act.
25. This phrase is relevant to section 152 of the NR Act (relating to relinquishing a biodiversity certificate) and to section 95 of the NR Rules (relating to instructions to transfer a biodiversity certificate from one Register account to another Register account).
26. The effect of section 9 of the NR Act is that such notices need to be transmitted to the Regulator by means of electronic communication, in accordance with any particular information technology requirements required by the Regulator.
27. The notice is also required to comply with any rules made for the purpose of subsection 9(2) of the NR Act. Subsection 9(2) of the NR Act allows the rules to make provision for or in relation to the security and authenticity of notices transmitted to the Regulator by means of electronic communication. Without limiting the rules that can be made for the purposes of

subsection 9(2), such rules are able to deal with encryption and authentication of identity (see subsection 9(3) and (4) of the NR Act).

28. Section 9 of the NR Rules is made for the purposes of subsection 9(2) of the NR Act and sets out the requirements for the transmission of an electronic notice to the Regulator. These requirements are:
- the electronic notice must be transmitted using the Regulator’s website; and
 - if the electronic notice is required to be transmitted to the Regulator by a person who holds a Register account – the notice must be transmitted by:
 - the person; or
 - an authorised representative of the person.

Part 2 – Registered biodiversity projects

29. Part 2 of the NR Act provides for the registration of biodiversity projects. A project proponent can apply to the Regulator for the approval of the registration of a biodiversity project. The Regulator must be satisfied that certain requirements have been met before approving the registration of a biodiversity project, and the registration may be subject to certain conditions. Part 2 of the NR Act also allows the rules to:
- allow the Regulator to vary certain aspects of a registered biodiversity project on application by the project proponent;
 - allow the Regulator to cancel the registration of a registered biodiversity project (either unilaterally or on application by the project proponent);
 - exclude certain kinds of biodiversity projects from being able to be registered under the NR Act (called ‘excluded biodiversity projects’).
30. Part 2 of the NR Rules (sections 10 to 45) provides for additional information and documents that must accompany an application to register a biodiversity project, sets out eligibility requirements that must be met for a project to be registered and specifies the kinds of projects that are excluded biodiversity projects that can’t be registered under the NR Act. Part 2 of the NR Rules also provides for the voluntary variation of registered biodiversity projects, the voluntary cancellation of registered biodiversity projects, and the unilateral cancellation of a registered biodiversity project by the Regulator.

Division 1 – Registration of biodiversity project

Section 10 – Operation of this Division

31. Section 10 of the NR Rules clarifies that Division 1 of Part 2 of the NR Rules (sections 10 to 13) is made for the purposes of Division 2 of Part 2 of the NR Act and makes provision for or in relation to the registration of biodiversity projects.
32. Division 1 of Part 2 of the NR Rules:
 - provides for additional information and documents that must accompany an application to register a biodiversity project; and
 - specifies eligibility requirements that must be met before a project can be registered; and
 - specifies matters that must be included in a notice of approval of registration.

Section 11 – Application for registration—other information and documents

33. Section 11 of the NR Act provides that an eligible person may apply to the Regulator for the approval of the registration of a biodiversity project. An *eligible person* is defined in section 7 of the NR Act to mean an individual, a body corporate, a trust, a corporation sole, a body politic, or a local governing body.
34. Section 12 of the NR Act sets out the form and content of an application to register a biodiversity project. Paragraph 12(2)(f) of the NR Act provides that the application must include such other information as is specified in the rules. Paragraph 12(3)(e) of the NR Act provides that the application must be accompanied by such other documents as are specified in the rules.
35. Section 11 of the NR Rules is made for the purposes of paragraphs 12(2)(f) and 12(3)(e) of the NR Act and specifies the information that must be included in, and the documents that must accompany, an application under section 11 of the NR Act for the approval of the registration of a biodiversity project.
36. Subsection 11(2) has the effect that an application under section 11 of the NR Act must include, or be accompanied by, the following information and documents about the proposed project proponent, or proposed project proponents:
 - a statement that the applicant is to be registered as the project proponent, or one of the project proponents, for the project;
 - if there is more than one proposed project proponent—the eligible person who is proposed to be the nominee of the project proponents (in accordance with Part 3 of the NR Act);
 - for each eligible person who is proposed to be a project proponent:

- evidence that the person is an eligible person;
 - evidence that verifies the identity of the person in accordance with the identification procedures in Division 1 of Part 21 of the NR Rules (which sets out identification procedures for individuals, trusts, and persons who are not individuals or trusts (for example, bodies corporate));
 - if a matter specified in, or for the purposes of, sections 97, 98, 99 or 99A of the NR Act (matters that the Regulator must or may have regard to in determining whether a person is a fit and proper person) is applicable, or otherwise relevant, to the person—information, and supporting evidence, about the matter.
- if the proposed project area is or includes Crown land (whether or not that land is also Torrens system land)—evidence of the notification required by paragraph 12(2)(a) of the NR Rules to be given to the Crown lands Minister in relation to the State or Territory in which the area is located.
 - Paragraph 12(2)(a) of the NR Rules requires the project proponent to notify the relevant Crown lands Minister of the intent to apply to the Regulator to approve the registration of the project.

37. Subsection 11(3) allows the Regulator to require, in the approved form for an application under section 11 of the NR Act, that the Regulator may make under paragraph 12(1)(b) of the NR Act, the following information to be provided, if relevant, for a proposed project proponent, or an authorised representative, officer, employee or trustee of the eligible person:

- a person's full name, address and contact details;
- a person's business name and, if different, trading name;
- the address of a person's principal place of business;
- a person's ABN, ACN, ARBN, GST registration number, Indigenous corporation number or other unique number;
- an individual's date of birth and residential address;
- each name by which an individual is known by;
- a person's status as one of the following:
 - an individual, including an individual who is a sole trader;
 - a body corporate;
 - a trust;

- a corporation sole;
 - a body politic;
 - a local governing body;
 - any other kind of entity;
- if the person’s status is ‘any other kind of entity’—the kind of entity the person is;
 - a description of the form in which a body corporate has been incorporated;
 - a description of the type of trust a trust is;
 - the full name and date of birth of the beneficiaries of a trust;
 - details about a class of which beneficiaries of a trust are members;
 - each jurisdiction in which a person operates;
 - the full name, address and contact details of any Australian agent through which a body corporate that is a foreign person conducts business.
38. It is appropriate for the Regulator to be able to collect this information for an applicant for the approval of the registration of a biodiversity project in order to ensure that the proposed project proponent, or each of the proposed project proponents, is both an eligible person and a fit and proper person (see criteria for approval at paragraphs 15(4)(i) and (j) of the NR Act).
39. Subsection 11(4) has the effect that an application under section 11 of the NR Act must include, or be accompanied by, the following information and documents about the project:
- the name or proposed name of the project;
 - a description of the project;
 - a statement that the project is being, or is to be, carried on in Australia;
 - the biodiversity outcome for the project, which is the enhancement or protection of biodiversity that the project is designed to achieve (see definition of *biodiversity outcome* in section 7 of the NR Act);
 - a statement that the project is of a kind specified in the methodology determination that is proposed to cover the project (the applicable methodology determination);

- details of how the project meets the conditions that are set out in the applicable methodology determination for the purposes of paragraph 45(1)(b) of the NR Act (conditions that must be satisfied for the project to be registered);
 - if the applicable methodology determination requires a project plan for the project—details of how the implementation of the project plan is likely to result in a biodiversity certificate being issued in respect of the project;
 - if the applicable methodology determination does not require a project plan for the project—details of how the carrying out of the project is likely to result in a biodiversity certificate being issued in respect of the project;
 - if the applicable methodology determination requires an activity period for the project—a statement that the proposed activity period for the project has been worked out in accordance with the applicable methodology determination and evidence supporting that statement;
 - a statement that the proposed permanence period for the project complies with section 34 of the NR Act (which sets out three types of permanence period that can apply to a registered biodiversity project);
 - the likely skills and experience required to carry out the project in accordance with the applicable methodology determination;
 - if stakeholders have been consulted or engaged with in relation to the project:
 - details of the consultation or engagement; and
 - details of any resulting advice obtained from those stakeholders and how that advice has been considered in the project design;
 - if applicable – a copy of the declaration mentioned in subsection 12(7) of the NR Act (that the registered native title body corporate does not consent to being specified as a project proponent along with the applicant);
 - details of how the project meets the eligibility requirements specified in section 12 of the NR Rules (which are made for the purposes of paragraph 15(4)(n) of the NR Act);
 - a statement that the project is not an excluded biodiversity project under section 33 of the NR Act and Division 4 of Part 2 of the NR Rules (see section 45).
40. Subsection 11(5) has the effect that an application under section 11 of the NR Act must include, or be accompanied by, the following information and documents about the project area for the project:

- a description of the project area in accordance with the requirements set out in paragraphs 77(2)(a) to (c) of the NR Rules.
 - Paragraphs 77(2)(a) to (c) require the project area to be described by reference to the State or Territory in which the project area is located (if any), the street address, lot number and land title details (if any) for the land, the local government area (if any) in which the land is situated and, if any part of the project area is Australian waters (other than inland waters), the boundary of those waters.
- a map of, and geospatial data for, the project area;
- for any part of the project area located on land—the size of that area, in hectares;
- for any part of the project area located in waters—the size of that area, in square metres or kilometres;
- if the project area (or part) is, or overlaps with, an area classified by the IBRA as a bioregion—the name of the bioregion.
 - The IBRA is the Interim Biogeographic Regionalisation for Australia and is defined in section 5 of the NR Rules to mean the geospatial database of that name that is freely available on the Department’s website;
- if the project area is or includes a native title area:
 - a statement to that effect and evidence supporting that statement;
 - evidence that identifies the part of the project area that is the native title area, and whether that native title area is, or is not, an exclusive possession native title area;
- a statement that the project area meets the criteria for the approval of the registration of the project under paragraph 15(4)(k) of the NR Act, and evidence in support of the statement.
 - Paragraph 15(4)(k) of the NR Act requires that the project area meets the requirements in subsection 15(5) of the NR Act. The effect of subsection 15(5) of the NR Act is that the project area is, or is a combination of Torrens system land, Crown land, or Australian waters;
- a statement that the project area does not consist of, or include, a biodiversity maintenance area or part of a biodiversity maintenance area.
 - A biodiversity maintenance area is an area declared as such under Part 14 of the NR Act. A biodiversity project cannot be registered in a biodiversity maintenance area (see paragraph 15(4)(l) of the NR Act).

41. Subsection 11(6) has the effect that an application under section 11 of the NR Act must include, or be accompanied by, the following information and documents about necessary consents:
- if paragraph 15(6)(a) of the NR Act applies (dealing with pre-registration consent requirements for projects where the project area is or includes Torrens system land):
 - details of how the requirements in paragraph 15(6)(a) of the NR Act have been met; and
 - if a consent mentioned in subparagraph 15(6)(a)(iv) or (v) of the NR Act to the carrying out of the project has been obtained – evidence of that consent;
 - if paragraph 15(6)(b) of the NR Act applies (dealing with consent requirements for projects where the project area is or includes a native title area for which there is a registered native title body corporate):
 - details of how the requirement in that paragraph has been met; and
 - if a consent mentioned in subparagraph 15(6)(b)(iv) of the NR Act to the carrying out of the project has been obtained – evidence of that consent; and
 - if a consent mentioned in subparagraph 15(6)(b)(v) of the NR Act to the registration of the project has been obtained – evidence of that consent and details of how the consent to the carrying out of the project is to be obtained before an application is made for a biodiversity certificate in respect of the project;
 - if there are one or more persons who hold an eligible interest in land (within the meaning of sections 89, 90 and 92 of the NR Act) that is included in the project area and from whom consent to the registration of the project must be obtained before an application is made for a biodiversity certificate for the project—for each eligible interest holder:
 - who the eligible interest holder is; and
 - if the required consent has been obtained – evidence of that consent; and
 - if the required consent has not been obtained – details of how the consent is to be obtained before an application for a biodiversity certificate is made.
42. Subsection 11(7) has the effect that an application under section 11 of the NR Act must include, or be accompanied by, the following information and documents about any regulatory approvals required in relation to the project:
- information about the approval, including the regulatory authority responsible for issuing the approval;

- if the approval has been issued – a copy of the approval, and the reference number (however described) for the approval;
 - if the approval has not been issued – the steps taken, or proposed to be taken, to obtain the approval;
 - an authorisation from the applicant to the Regulator to enable the Regulator to contact and obtain information from the authority in relation to the approval.
43. To the extent that any information collected in relation to an application for registration of a biodiversity project is personal information within the meaning of the *Privacy Act 1968* (the Privacy Act), that information must be collected, stored, used and disclosed in accordance with the Australian Privacy Principles. It is anticipated that most applicants for registration of a biodiversity project would be entities other than individuals, such as bodies corporate, to which the Privacy Act does not apply.

Section 12 – Criteria for approval of registration—eligibility requirements

44. Section 11 of the NR Act provides that an eligible person may apply to the Regulator for the approval of the registration of a biodiversity project. An *eligible person* is defined in section 7 of the NR Act to mean an individual, a body corporate, a trust, a corporation sole, a body politic, or a local governing body.
45. Section 15 of the NR Act provides for the approval of registration of biodiversity projects. Subsection 15(4) of the NR Act sets out criteria of which the Regulator must be satisfied to approve the registration. Paragraph 15(4)(n) of the NR Act has the effect that the Regulator can only approve the registration of a biodiversity project if the Regulator is satisfied that the project meets the eligibility requirements specified in the rules.
46. Section 12 of the NR Rules is made for the purposes of paragraph 15(4)(n) of the NR Act and specifies eligibility requirements that biodiversity projects must meet to be able to be registered under the NR Act.
47. These requirements are:
- if the proposed project area is or includes Crown land (whether or not that land is also Torrens system land)—the proposed project proponent has notified the Crown lands Minister in relation to the State or Territory in which the area is located of the intent to apply to the Regulator to approve the registration of the project;
 - if the proposed project area is or includes Crown land that is not Torrens system land or an exclusive possession native title area – any of the following are met:
 - the proposed project proponent, or one of the proposed project proponents, is the State or Territory, or an authority of the State or Territory, that owns the land on or in which the area is located; or

- the State or Territory, or an authority of the State or Territory, that owns the land on or in which the proposed project area is located has consented to the project being carried out on that land as a registered biodiversity project by the proposed project proponent or project proponents; or
- the proposed project proponent, or one of the proposed project proponents, holds a lease of the Crown land on or in which the proposed project area is located, and the terms of the lease are consistent with the project being carried out on that land as a registered biodiversity project by the proposed project proponent or proponents; or
- a person who holds a lease of the Crown land on or in which the area is located has consented to, and the terms of the lease are consistent with, the proposed project being carried out on that land as a registered biodiversity project by the proposed project proponent or proponents;
- the proposed project is not required to be carried out, either wholly or in part, as a remediation measure for the contravention of a Commonwealth, State or Territory law.
 - This means that if another law, a Regulator under another law, or a Court, requires or orders the project proponent to carry out the project (or part of the project) to remediate damage they have caused by a contravention of a law, the project proponent would not be able to register the project under the NR Act (and obtain a biodiversity certificate for that project). The intention is to prevent the project proponent from financially benefiting from a contravention of a law.

Section 13 – Notice of approval of registration—matters to be included in notice

48. Section 11 of the NR Act provides that an eligible person may apply to the Regulator for the approval of the registration of a biodiversity project. An *eligible person* is defined in section 7 of the NR Act to mean an individual, a body corporate, a trust, a corporation sole, a body politic, or a local governing body.
49. Section 15 of the NR Act provides for the approval of registration of biodiversity projects. Subsection 15(7) of the NR Act sets out matters that must be included in a notice approving the registration of a biodiversity project. Paragraph 15(7)(a) of the NR Act provides that the notice must set out, in accordance with the rules, the project area. Paragraph 15(7)(f) of the NR Act provides that the notice must set out such attributes of the project as are specified in the rules.
50. Section 13 of the NR Rules is made for the purposes of paragraphs 15(7)(a) and (f) of the NR Act.
51. Subsection 13(2) requires, for the purposes of paragraph 15(7)(a) of the NR Act, the notice approving the registration of a biodiversity project to describe the project area in accordance with the requirements set out in paragraphs 77(2)(a), (b) and (c) of the NR Rules.

- Paragraphs 77(2)(a) to (c) require the project area to be described by reference to the State or Territory in which the project area is located (if any), the street address, lot number and land title details (if any) for the land, the local government area (if any) in which the land is situated and, if any part of the project area is Australian waters (other than inland waters), the boundary of those waters.

52. Subsection 13(3) requires, for the purpose of paragraph 15(7)(f) of the NR Act, the notice approving the registration of a biodiversity outcome to set out the biodiversity outcome for the project.

- The *biodiversity outcome* for the project is defined in section 7 of the NR Act to mean the enhancement or protection of biodiversity the project is designed to achieve.

Division 2 – Voluntary variation of registration of biodiversity project

Subdivision A – Change in identity of project proponent

Section 14 – Operation of this Subdivision

53. Section 14 of the NR Rules clarifies that Subdivision A of Division 2 of Part 2 of the NR Rules (sections 14 to 17) is made for the purposes of subsections 19(1) and 22(1) of the NR Act and makes provision for or in relation to the variation of the registration of a registered biodiversity project to change the identity of the project proponent.

54. The note following section 14 directs the reader to Subdivision D of Division 2 of Part 2 of the NR Rules (sections 26 and 27) which are also made for the purposes of subsection 22(1) of the NR Act.

Section 15 – Application for approval of variation

55. Subsection 19(1) of the NR Act provides that the rules may make provision for and in relation to empowering the Regulator to vary the registration of a registered biodiversity project to add an eligible person as a project proponent of the project or remove a project proponent from the project (so long as this would not result in there not being any project proponents for the project), provided the requirements in subsection 19(2) of the NR Act are met.

56. Rules made for the purposes of subsection 19(1) of the NR Act can only empower the Regulator to vary the registration of a registered biodiversity project on application by the project proponent. Put another way, the Regulator cannot unilaterally vary the registration of a registered biodiversity project to change the identity of the project proponent.

57. Subsection 22(1) of the NR Act has the effect that rules made for the purposes of subsection 19(1) of the NR Act may make provision for or in relation to (relevantly):

- applications for variation under those rules;
- the approval by the Regulator of a form for such an application;

- information and documents that must accompany such an application.
58. Section 15 of the NR Rules is made for the purposes of subsection 19(1) of the NR Act.
59. Subsection 15(1) allows the project proponent for a registered biodiversity project to apply to the Regulator for the Regulator to vary the project's registration to:
- add an eligible person as a project proponent of the project; or
 - remove a project proponent from the project (so long as this would not result in there not being any project proponents for the project).
60. An *eligible person* is defined in section 7 of the NR Act to mean an individual, a body corporate, a trust, a corporation sole, a body politic, or a local governing body.
61. Subsection 15(2) requires the application to be in writing and in the form approved by the Regulator, and to be accompanied by the following information and documents:
- the unique identifier assigned for the project;
 - evidence that the criteria for approval in subsection 16(2) of the NR Rules is met.
62. Section 15 of the NR Rules complies with the requirements in subsection 19(2) of the NR Act.
63. The note following subsection 15(2) directs the reader to section 37 of the NR Act if granting the application would mean that there are multiple project proponents for the project. Section 37 of the NR Act provides for the nomination of a nominee in relation to a project with multiple project proponents.

Section 16 – Approval of variation

64. Subsection 19(1) of the NR Act provides that the rules may make provision for and in relation to empowering the Regulator to add an eligible person as a project proponent of the project, or remove a project proponent from the project (so long as this would not result in there not being any project proponents for the project), provided the requirements in subsection 19(2) of the NR Act are met.
65. Section 16 of the NR Rules is made for the purpose of subsection 19(1) of the NR Act and sets out the process and criteria for the Regulator when deciding whether to vary the registration of a registered biodiversity project to change the identity of the project proponent, or project proponents, for the project.
66. Subsection 16(1) requires the Regulator to consider the application for variation of the registration of a registered biodiversity project made under section 15 of the NR Rules and

decide whether to vary the project's registration to add or remove a project proponent or refuse to vary the project's registration.

67. Under subsection 16(2), the Regulator can only decide to vary the project's registration to change the identity of the project proponent if the Regulator is satisfied that:
- if the application is to add an eligible person as a project proponent of the project:
 - the eligible person has consented, in writing, to the variation; and
 - the identity of the eligible person is verified in accordance with the identification procedures in Division 1 of Part 21 (which sets out procedures for verifying the identity of an individual, a trust, or a person that is not an individual or a trust (for example, a body corporate); and
 - the eligible person is a fit and proper person (in accordance with Part 8 of the NR Act); and
 - if the application is to remove a project proponent from the project:
 - the project proponent proposed to be removed consents to the variation; and
 - the removal will not result in there not being any project proponents for the project; and
 - the remaining project proponents will have the capability and resources to carry out the project; and
 - if there are multiple project proponents for the project—the application is made by the nominee in relation to the project on behalf of the multiple project proponents; and
 - the consultation requirements in subsection 16(3) have been met; and
 - if the applicant is required to give security to the Commonwealth under subsection 16(4)—the applicant has given the required security to the Commonwealth.
68. These criteria comply with the requirements in subsection 19(2) of the NR Act.
69. Subsection 16(3) requires the Regulator to consult the following persons by giving them written notice of the proposed variation and giving the person the opportunity to make submissions in relation to the proposed variation within a period of no less than 28 days:
- if a biodiversity certificate is in effect in relation to the project, and the project proponent for the project is not the holder of the certificate – the holder of the certificate; and

- if the project includes a native title area for which there is a registered native title body corporate (and the registered native title body corporate is not a project proponent) – the registered native title body corporate.
70. Subsection 16(4) provides that the Regulator may require the applicant to give the Commonwealth security in relation to the fulfilment of any requirements to relinquish biodiversity certificates that may be imposed under Part 13 of the NR Act in relation to the project (whether or not the circumstances that may result in a relinquishment notice being given exist at the time the variation applied for is made). This provides assurance to the Regulator, and the market more generally, that the new project proponent (or proponents) would be able to meet any future relinquishment requirements that may arise.
71. Subsection 16(5) requires the Regulator to take all reasonable steps to ensure that a decision under section 16 of the NR Rules is made:
- if the Regulator is required to consult with a person under subsection 16(3) or has sought further information from the applicant under section 128 – within 90 days after the person was notified of the consultation or the applicant gave the Regulator the information (as applicable); or
 - otherwise – within 90 days after the application is made.
72. Subsection 16(6) provides that if the Regulator decides to make the variation, then the variation will have effect from the day after the notice of decision is given to the applicant under section 17 of the NR Rules.
73. A decision of the Regulator made under section 16 is a reviewable decision under paragraph 212(b) of the NR Act.

Section 17 – Notification of decision

74. Subsection 22(4) of the NR Act has the relevant effect that rules made for the purposes of subsection 19(1) of the NR Act must require the Regulator to give notice of a decision to vary the registration of a registered biodiversity project to certain persons.
75. Subsection 22(5) of the NR Act has the relevant effect that rules made for the purposes of subsection 19(1) of the NR Act must require the Regulator to give written notice of a decision to refuse to vary the registration of a registered biodiversity project to the applicant.
76. Section 17 of the NR Rules is made for the purposes of subsection 19(1) of the NR Act.
77. Subsections 17(1) and (2) have the combined effect that the Regulator must, as soon as practicable after making the decision, give written notice of a decision under section 16 of the NR Rules to vary the registration of a registered biodiversity project to change the identity of the project proponent, to:
- the applicant; and

- where the variation is to add an eligible person as a project proponent of the project—that eligible person; and
- where the variation is to remove a project proponent who is not the applicant – that project proponent; and
- if there is a relevant land registration official in relation to the project—the relevant land registration official; and
- if a biodiversity certificate has been issued in respect of the project and the holder of the biodiversity certificate is not the applicant—the holder of the certificate; and
- if the project area is or includes a native title area and there is a registered native title body corporate for the native title area that is not a project proponent for the project—the registered native title body corporate.

78. Subsections 17(1) and (3) have the combined effect that the Regulator must, as soon as practicable after making the decision, give written notice of a decision to refuse to vary the registration of a registered biodiversity project, and the reasons for that decision, to:

- the applicant; and
- if a biodiversity certificate has been issued in respect of the project and the holder of the biodiversity certificate is not the applicant—the holder of the certificate.

79. Section 17 of the NR Rules complies with the requirements in subsections 22(4) and 22(5) of the NR Act.

Subdivision B – Change of project areas etc.

Section 18 – Operation of this Subdivision

80. Section 18 of the NR Rules clarifies that Subdivision B of Division 2 of Part 2 of the NR Rules (sections 18 to 21) is made for the purposes of subsections 19(1) and 22(1) of the NR Act and makes provision for or in relation to the variation of the registration of a registered biodiversity project in respect of the project area, the methodology determination that covers the project, the project’s activity period or the project’s permanence period.

81. The note following section 18 directs the reader to Subdivision D of Division 2 of Part 2 of the NR Rules (sections 26 and 27) which is also made for the purposes of subsection 22(1) of the NR Act.

Section 19 – Application for approval of variation

82. Subsection 20(1) of the NR Act provides that the rules may make provision for and in relation to empowering the Regulator to vary the registration of a registered biodiversity project in respect of the project area, the methodology determination that covers the project,

the project's activity period or the project's permanence period, provided the requirements in subsections 20(2) and (3) of the NR Act are met.

83. Rules made for the purposes of subsection 20(1) of the NR Act can only empower the Regulator to vary the registration of a registered biodiversity project on application by the project proponent. Put another way, the Regulator cannot unilaterally vary the registration of a registered biodiversity project in respect of the project area, the methodology determination that covers the project, the project's activity period or the project's permanence period.
84. Subsection 22(1) of the NR Act has the effect that rules made for the purposes of subsection 19(1) of the NR Act may make provision for or in relation to (relevantly):
 - applications for variation under those rules;
 - the approval by the Regulator of a form for such an application;
 - information and documents that must accompany such an application.
85. Section 19 of the NR Rules is made for the purposes of subsection 20(1) of the NR Act.
86. Subsection 19(1) allows the project proponent for a registered biodiversity project to apply to the Regulator for the Regulator to vary the project's registration in respect of any of the project area, the methodology determination that covers the project, the project's activity period or the project's permanence period.
87. Subsection 19(2) requires the application to be in writing and in the form approved by the Regulator, and to be accompanied by the following information and documents:
 - the unique identifier assigned for the project;
 - evidence that the criteria for the approval of the variation mentioned in subsection 20(2) of the NR Rules have been met; and
 - if the application is in respect of the project area—identify whether, as a result of the variation, any new consent to the registration or the carrying out of the biodiversity project needs to be obtained from:
 - a person who holds an eligible interest in the project area (or part of the project area) for the project; or
 - a registered native title body corporate; and
 - for each consent that is required to be obtained before the variation is approved—a statement to the effect that the consent has been obtained and evidence supporting that statement; and

- if the application is in respect of the project area and that area, as proposed to be varied, would include new areas—the information and documents in relation to the project area, as proposed to be varied, mentioned in subsection 11(5) of the NR Rules.
88. The criteria for approval of the variation in subsection 20(2) of the NR Rules requires that the criteria for approval of the registration of a biodiversity project under subsection 15(4) of the NR Act is met to the extent relevant to the project as proposed to be varied.
89. This means that, where the proposed variation is to vary the project area to add a new area, the requirements in subsection 15(6) of the NR Act will need to be met in relation to the proposed new parts of the project area (see paragraph 15(4)(m) of the NR Act). The effect of subsection 15(6) of the NR Act is that:
- where the proposed new part of the project area consists of, or includes, Torrens system land – the requirements in paragraph 15(6)(a) of the NR Act will need to be satisfied prior to the variation being approved. Paragraph 15(6)(a) of the NR Act requires the project proponent to either hold an estate in fee simple for the relevant Torrens system land, or to obtain consent to carry out the project from a person who holds a legal interest or estate in that Torrens system land (such persons will be eligible interest holders for the land – see section 89 of the NR Act). The consent may be demonstrated by a lease that has terms consistent with the project being carried out on the land, or may be demonstrated in another way.
 - where the proposed new part of the project area consists of, or includes, a native title area for which there is a registered native title body corporate – the requirements of paragraph 15(6)(b) of the NR Act will need to be satisfied prior to the variation being approved. Paragraph 15(6)(b) of the NR Act requires the project proponent to either be the registered native title body corporate, or to obtain the consent of the registered native title body corporate to either the carrying out of the project on or in the native title area as a registered biodiversity project by the project proponent or the project proponents, or to the project's registration.
 - If the registered native title body corporate only consents (prior to registration) to the project's registration, the project proponent will need to obtain the consent of the registered native title body corporate to either the carrying out of the project on or in the native title area as a registered biodiversity project by the project proponent or the project proponents prior to being issued a biodiversity certificate for the project.
90. Subsection 19(2) has the relevant effect that the application for variation will need to identify whether any such consents are required and, for those consents required before the variation can be approved, include a statement to the effect that the consent has been obtained and evidence supporting the statement.
91. Subsection 19(3) clarifies that a consent from a registered native title body corporate may be set out in a registered indigenous land use agreement.

92. Section 19 of the NR Rules complies with the requirements in subsection 20(2) of the NR Act.

Section 20 – Approval of variation

93. Subsection 20(1) of the NR Act provides that the rules may make provision for and in relation to empowering the Regulator to vary the registration of a registered biodiversity project in respect of the project area, the methodology determination that covers the project, the project's activity period or the project's permanence period, provided the requirements in subsections 20(2) and (3) of the NR Act are met.
94. Section 20 of the NR Rules is made for the purpose of subsection 20(1) of the NR Act and sets out the process and criteria for the Regulator when deciding whether to vary the registration of a registered biodiversity project in respect of the project area, the methodology determination that covers the project, the project's activity period or the project's permanence period.
95. Subsection 20(1) requires the Regulator to consider the application for variation of the registration of a registered biodiversity project made under section 19 of the NR Rules and decide whether to vary the project's registration in respect of the project area, the methodology determination that covers the project, the project's activity period or the project's permanence period, or to refuse to vary the project's registration.
96. Under subsection 20(2), the Regulator can only decide to vary the project's registration in respect of the project area, the methodology determination that covers the project, the project's activity period or the project's permanence period if the Regulator is satisfied that:
- the criteria for the approval of the registration under subsection 15(4) of the NR Act are met to the extent that they are relevant to the project as proposed to be varied;
 - subsection 15(4) of the NR Act sets out the criteria of which the Regulator must be satisfied to grant an approval for registration of a biodiversity project;
 - this means that the Regulator must apply each of the criteria in subsection 15(4) of the NR Act to the project as proposed to be varied, and can only approve the variation if satisfied that each criteria that is relevant to the variation is met;
 - this includes obtaining any pre-registration consents required to meet paragraph 15(4)(m) of the NR Act (which applies subsection 15(6) of the NR Act);
 - however, the Regulator is not required to be satisfied that the project, as proposed to be varied, is not an excluded biodiversity project if the proposed variation would reduce the project area and not add any new areas to the project area (see subsection 20(3) of the NR Rules).

- if the application is in respect of the project area and that area, as proposed to be varied, would include new areas – the application has not been made during the period specified in an order (if any) under subsection 16(1) of the NR Act that relates to the methodology determination that covers the project;
 - section 16 of the NR Act allows the Minister to suspend consideration of applications covered by specified methodology determinations;
- if the application is in respect of the methodology determination that covers the project:
 - the requirements of subsection 20(2) of the NR Act are met in respect of the methodology determination that is proposed to cover the project as a result of the variation; and
 - the application has not been made during the period specified in an order (if any) under subsection 16(1) of the NR Act that relates to the methodology determination that is proposed to cover the project as a result of the variation; and
- if the application is in respect of the project’s permanence period – the variation would not reduce that period; and
- if there are multiple project proponents for the project – the application is made by the nominee in relation to the project on behalf of the multiple project proponents; and
- if a biodiversity certificate is in effect for the project, and the project proponent is not the holder of the certificate – either:
 - the holder of the certificate has consented, in writing, to the variation; or
 - the variation would not result in a material change to the certificate; and
- if a biodiversity certificate is not in effect for the project—an application for the issue of a biodiversity certificate has not been made.

97. These criteria comply with the requirements in subsections 20(2) and (3) of the NR Act.

98. Subsection 20(4) requires the Regulator to take all reasonable steps to ensure that a decision under section 20 of the NR Rules is made within 90 days after the application is made. The exception is if the Regulator has sought further information from the applicant under section 128 – in that case, the timeframe the Regulator must take all reasonable steps to ensure a decision is made would be within 90 days after the requested further information was given to the Regulator.

99. Subsection 20(5) provides that if the Regulator decides to make the variation, then the variation will have effect from the day after the notice of decision is given to the applicant under section 21 of the NR Rules.

100. A decision of the Regulator made under section 20 is a reviewable decision under paragraph 212(b) of the NR Act.

Section 21 – Notification of decision

101. Subsection 22(4) of the NR Act has the relevant effect that rules made for the purposes of subsection 20(1) of the NR Act must require the Regulator to give notice of a decision to vary the registration of a registered biodiversity project to certain persons.
102. Subsection 22(5) of the NR Act has the relevant effect that rules made for the purposes of subsection 20(1) of the NR Act must require the Regulator to give written notice of a decision to refuse to vary the registration of a registered biodiversity project to the applicant.
103. Section 21 of the NR Rules is made for the purposes of subsection 20(1) of the NR Act.
104. Subsections 21(1) and (2) have the combined effect that the Regulator must, as soon as practicable after making the decision, give written notice of a decision under section 20 of the NR Rules to vary the registration of a registered biodiversity project in respect of the project area, the methodology determination that covers the project, the project's activity period or the project's permanence period, to:
- the applicant; and
 - if there is a relevant land registration official in relation to the project—the relevant land registration official; and
 - if a biodiversity certificate has been issued in respect of the project and the holder of the biodiversity certificate is not the applicant—the holder of the certificate; and
 - if the project area is or includes a native title area and there is a registered native title body corporate for the native title area that is not a project proponent for the project—the registered native title body corporate.
105. Subsections 21(1) and (3) have the combined effect that the Regulator must, as soon as practicable after making the decision, give written notice of a decision to refuse to vary the registration of a registered biodiversity project, and the reasons for that decision, to:
- the applicant; and
 - if a biodiversity certificate has been issued in respect of the project and the holder of the biodiversity certificate is not the applicant—the holder of the certificate.
106. Section 21 of the NR Rules complies with the requirements in subsections 22(4) and 22(5) of the NR Act.

Subdivision C – Change in conditions of registration

Section 22 – Operation of this Subdivision

107. Section 22 of the NR Rules clarifies that Subdivision C of Division 2 of Part 2 of the NR Rules (sections 22 to 25) is made for the purposes of subsections 21(1) and 22(1) of the NR Act and makes provision for or in relation to the variation of the registration of a registered biodiversity project to remove a condition to which the registration is subject.
108. The note following section 22 directs the reader to Subdivision D of Division 2 of Part 2 of the NR Rules (sections 26 and 27) which is also made for the purposes of subsection 22(1) of the NR Act.

Section 23 – Application for approval of variation

109. Subsection 21(1) of the NR Act provides that the rules may make provision for and in relation to empowering the Regulator to vary the registration of a registered biodiversity project to remove a condition imposed on the registration under any of subsections 17(2), 18(2) or 18A(2) of the NR Act, provided the requirements in subsection 21(2) of the NR Act are met.
110. Rules made for the purposes of subsection 21(1) of the NR Act can only empower the Regulator to vary the registration of a registered biodiversity project on application by the project proponent. Put another way, the Regulator cannot unilaterally vary the registration of a registered biodiversity project to remove a condition imposed on the registration.
111. Subsection 22(1) of the NR Act has the effect that rules made for the purposes of subsection 21(1) of the NR Act may make provision for or in relation to (relevantly):
- applications for variation under those rules;
 - the approval by the Regulator of a form for such an application;
 - information and documents that must accompany such an application.
112. Section 23 of the NR Rules is made for the purposes of subsection 21(1) of the NR Act.
113. Subsection 23(1) allows the project proponent for a registered biodiversity project to apply to the Regulator for the Regulator to vary the project's registration to remove any of the following conditions:
- a condition mentioned in subsection 17(2) of the NR Act (conditions about obtaining regulatory approvals);
 - a condition mentioned in subsection 18(2) of the NR Act (conditions about obtaining consents from eligible interest holders);

- a condition mentioned in subsection 18A(2) of the NR Act (condition about obtaining consent from registered native title body corporate.

114. Subsection 23(2) requires the application to be in writing and in the form approved by the Regulator, and to be accompanied by the following information and documents:

- the unique identifier assigned for the project;
- for each condition mentioned in the application—be accompanied by evidence that the condition has been met.

115. Section 23 of the NR Rules complies with the requirements in subsection 21(2) of the NR Act.

Section 24 – Approval of variation

116. Subsection 21(1) of the NR Act provides that the rules may make provision for and in relation to empowering the Regulator to vary the registration of a registered biodiversity project to remove a condition imposed on the registration under any of subsections 17(2), 18(2) or 18A(2) of the NR Act, provided the requirements in subsection 21(2) of the NR Act are met.

117. Section 24 of the NR Rules is made for the purpose of subsection 21(1) of the NR Act and sets out the process and criteria for the Regulator when deciding whether to vary the registration of a registered biodiversity project to remove a condition imposed on the registration under any of subsections 17(2), 18(2) or 18A(2) of the NR Act.

118. Subsection 24(1) requires the Regulator to consider the application for variation of the registration of a registered biodiversity project made under section 23 of the NR Rules and decide whether to vary the registration of the project to remove the condition that is the subject of the application or refuse to vary the project's registration.

119. Under subsection 24(2), the Regulator can only decide to vary the project's registration to remove the condition that is the subject of the application if the Regulator is satisfied that:

- the condition has been met; and
- if there are multiple project proponents for the project—the application is made by the nominee in relation to the project on behalf of the multiple project proponents.

120. These criteria comply with the requirements in subsection 21(2) of the NR Act.

121. Subsection 24(3) requires the Regulator to take all reasonable steps to ensure that a decision under section 24 of the NR Rules is made within 90 days after the application is made. The exception is if the Regulator has sought further information from the applicant under section 128 – in that case, the timeframe the Regulator must take all reasonable steps to ensure a

decision is made would be within 90 days after the requested further information was given to the Regulator.

122. Subsection 24(4) provides that if the Regulator decides to make the variation, then the variation will have effect from the day after the notice of decision is given to the applicant under section 25 of the NR Rules.
123. A decision of the Regulator made under section 24 is a reviewable decision under paragraph 212(b) of the NR Act.

Section 25 – Notification of decision

124. Subsection 22(4) of the NR Act has the relevant effect that rules made for the purposes of subsection 21(1) of the NR Act must require the Regulator to give notice of a decision to vary the registration of a registered biodiversity project to certain persons.
125. Subsection 22(5) of the NR Act has the relevant effect that rules made for the purposes of subsection 21(1) of the NR Act must require the Regulator to give written notice of a decision to refuse to vary the registration of a registered biodiversity project to the applicant.
126. Section 25 of the NR Rules is made for the purposes of subsection 21(1) of the NR Act.
127. Subsections 25(1) and (2) have the combined effect that the Regulator must, as soon as practicable after making the decision, give written notice of a decision under section 24 of the NR Rules to vary the registration of a registered biodiversity project to remove a condition on the registration, to:
- the applicant; and
 - if there is a relevant land registration official in relation to the project—the relevant land registration official; and
 - if the project area is or includes a native title area and there is a registered native title body corporate for the native title area that is not a project proponent for the project—the registered native title body corporate.
128. Subsections 25(1) and (3) have the combined effect that the Regulator must, as soon as practicable after making the decision, give written notice of a decision to refuse to vary the registration of a registered biodiversity project, and the reasons for that decision, to the applicant.
129. Section 25 of the NR Rules complies with the requirements in subsections 22(4) and 22(5) of the NR Act.

Subdivision D – Miscellaneous

Section 26 – Operation of this Subdivision

130. Section 26 of the NR Rules clarifies that Subdivision D of Division 2 of Part 2 of the NR Rules (sections 26 and 27) makes provision for or in relation to the rules set out in Subdivisions A, B and C of Division 2 of Part 2 of the NR Rules.
131. Specifically, Subdivision D is made for the purposes of paragraph 22(1)(k) of the NR Act and provides for the variation of a biodiversity certificate issued in respect of a registered biodiversity project (including such a certificate that is held by a person other than the project proponent for the project).as a result of the variation of the project’s registration under sections 16, 20 or 24 of the NR Rules.

Section 27 – Regulator may vary biodiversity certificate

132. Paragraph 22(1)(k) of the NR Act has the effect that the rules may include provision for or in relation to varying a biodiversity certificate issued in respect of a registered biodiversity project (including such a certificate that is held by a person other than the project proponent for the project) as a result of the variation of the project’s registration under sections 16, 20 or 24 of the NR Rules.
133. Subsection 27 of the NR Rules is made for the purposes of paragraph 22(1)(k) of the NR Act.
134. Subsection 27(1) has the effect that, if a registered biodiversity project is varied under Division 2 of Part 2 of the NR Rules (sections 16, 20 or 24), then the Regulator may also vary the biodiversity certificate issued in respect of the project, in accordance with subsection 27(2).
135. Subsection 27(2) provides that the Regulator may vary the biodiversity certificate to:
- if the registration is varied to add an eligible person as a project proponent of the project—add the person’s name as a project proponent; and
 - if the registration is varied to remove a project proponent from the project—remove the project proponent from the certificate; and
 - if the registration is varied in respect of the methodology determination that covers the project—to state the methodology determination that is to cover the project as a result of the variation; and
 - if the registration is varied in respect of the project’s permanence period—to state the permanence period that is to apply to the project as a result of the variation.

136. This will ensure that the biodiversity certificate for a project continues to accurately reflect these attributes of the project following a variation to the project’s registration. This is important for market confidence in the Nature Repair Market scheme.

Division 3 – Cancellation of registration of biodiversity project

Subdivision A – Voluntary cancellation of registration of biodiversity project

Section 28 – Operation of this Subdivision

137. Section 28 of the NR Rules clarifies that Subdivision B of Division 3 of Part 2 of the NR Rules (sections 28 to 31) is made for the purposes of subsections 23(1), 24(1) and 25(1) of the NR Act and makes provision for or in relation to the voluntary cancellation of the registration of a registered biodiversity project.

Section 29 – Application for approval of cancellation

138. Subsections 23(1) and 24(1) of the NR Act provides that the rules may make provision for and in relation to empowering the Regulator to cancel the registration of a registered biodiversity project, provided the requirements in subsection 23(2) and 24(2), respectively, are met.
139. The requirements in subsection 23(2) of the NR Act apply where the cancellation is to the registration of a registered biodiversity project for which a biodiversity certificate has been issued (whether or not the certificate remains in effect).
140. The requirements in subsection 24(2) of the NR Act apply where the cancellation is to the registration of a registered biodiversity project for which no biodiversity certificate has been issued for the project.
141. Rules made for the purposes of subsections 23(1) or 23(2) of the NR Act can only empower the Regulator to cancel the registration of a registered biodiversity project on application by the project proponent. Put another way, sections 23 and 24 of the NR Act allow the rules to provide for the voluntary cancellation of the registration of a registered biodiversity project.
142. Subsection 25(1) of the NR Act provides that rules made for the purposes of subsections 23(1) or 24(1) may make provision for or in relation to (relevantly):
- applications for cancellation under those rules;
 - the approval by the Regulator of a form for such an application;
 - information and documents that must accompany such an application.
143. Section 29 of the NR Rules is made for the purpose of subsections 23(1) and 24(1) of the NR Act.
144. Subsection 29(1) allows the project proponent for a registered biodiversity project to apply to the Regulator for the Regulator to cancel the project's registration, whether or not a biodiversity certificate has been issued in relation to the registered biodiversity project.
145. Subsections 29(2) and (3) require the application to be in writing and in the form approved by the Regulator, and to be accompanied by the following information and documents:
- the unique identifier assigned for the project;

- if there are multiple project proponents for the project—evidence that the application is made by the nominee in relation to the project on behalf of the multiple project proponents;
- if an application is made for cancellation of a project for which a biodiversity certificate has been issued:
 - evidence that a biodiversity certificate has been issued in respect of the project; and
 - evidence that the biodiversity certificate issued for the project has been relinquished in accordance with section 152 of the NR Act (which sets out how biodiversity certificates are relinquished); and
 - the day on which the biodiversity certificate was relinquished; and
 - the unique identifier assigned for the biodiversity certificate;
- if an application is made for cancellation of project for which no biodiversity certificate has been issued – a statement to that effect;
- if the applicant considers that an eligible person may want to be a project proponent for the project—a statement to that effect, and the name and contact details for the person.

146. An *eligible person* is defined in section 7 of the NR Act to mean an individual, a body corporate, a trust, a corporation sole, a body politic, or a local governing body.
147. Section 29 of the NR Rules complies with the requirements of subsections 23(2) and 24(2) of the NR Act.
148. If the project proponent is unable to relinquish the original biodiversity certificate issued for that project (because, for example, they have on sold it to another person who is unwilling or unable to sell it back to the project proponent), the project proponent would not be able to have the Regulator cancel the registration of the biodiversity project. There is no ability for the project proponent to relinquish one or more equivalent biodiversity certificates in place of the original biodiversity certificate that was issued for the project.

Section 30 – Approval of cancellation

149. Subsections 23(1) and 24(1) of the NR Act provides that the rules may make provision for and in relation to empowering the Regulator to cancel the registration of a registered biodiversity project, provided the requirements in subsection 23(2) and 24(2), respectively, are met.
150. The requirements in subsection 23(2) of the NR Act apply where the cancellation is to the registration of a registered biodiversity project for which a biodiversity certificate has been issued (whether or not the certificate remains in effect).

151. The requirements in subsection 24(2) of the NR Act apply where the cancellation is to the registration of a registered biodiversity project for which no biodiversity certificate has been issued for the project.
152. Section 30 of the NR Rules is made for the purpose of subsections 23(1) and 24(1) of the NR Act and sets out the process and criteria for the Regulator when deciding whether to cancel the registration of a registered biodiversity project, on application by the project proponent for the project.
153. Subsection 30(1) requires the Regulator to consider the application for cancellation of the registration of a registered biodiversity project made under section 29 of the NR Rules and decide whether to cancel, or refuse to cancel, the project's registration.
154. Where the application is to cancel the registration of a biodiversity project for which a biodiversity certificate has been issued, the Regulator can only decide to cancel the project's registration if the Regulator is satisfied that:
- a biodiversity certificate (the original certificate) has been issued in respect of the project (whether or not the certificate remains in effect); and
 - the original certificate has been relinquished in accordance with section 152 of the NR Act in relation to the project, as mentioned in paragraph 152(2)(c) of the NR Act; and
 - if there are multiple project proponents for the project—the application is made by the nominee in relation to the project on behalf of the multiple project proponents.
155. These criteria comply with the requirements in subsection 23(2) of the NR Act.
156. If the project proponent is unable to relinquish the original biodiversity certificate issued for that project (because, for example, they have on sold it to another person who is unwilling or unable to sell it back to the project proponent), the Regulator is not able to decide to cancel the registration of the biodiversity project. There is no ability for the project proponent to relinquish one or more equivalent biodiversity certificates in place of the original biodiversity certificate.
157. Where the application is to cancel the registration of a registered biodiversity project for which a biodiversity certificate has not been issued, the Regulator can only decide to cancel the project's registration if the Regulator is satisfied that no biodiversity certificate has been issued in respect of the project.
158. This criterion complies with the requirements in subsection 24(2) of the NR Act.
159. Subsections 30(3) and (4) have the combined effect that the Regulator must take all reasonable steps to ensure that a decision under section 30 of the NR Rules is made within 90 days after the application is made, unless:

- the Regulator has sought further information from the applicant in relation to the application under section 128 – in that case, the timeframe that applies is 90 days after the requested further information is given to the Regulator; or
- the project proponent for the project has made an application to vary the registration of the project to add or remove a project proponent under subsection 15(1) of the NR Rules and that application has not been determined; or
- the Regulator is aware that the project proponent for the project intends to make an application to vary the registration of the project to add or remove a project proponent under subsection 15(1).

160. Subsection 30(5) provides that, if the application is approved by the Regulator, the cancellation of the registration of the biodiversity project takes effect on the day after the notice of the decision is given to the applicant under section 31 of the NR Rules.

161. A decision of the Regulator made under section 30 is a reviewable decision under paragraph 212(c) of the NR Act.

Section 31 – Notification of decision

162. Subsection 25(4) of the NR Act has the effect that rules made for the purposes of subsection 23(1) or 24(1) of the NR Act must require the Regulator to give notice of a decision to cancel the registration of a registered biodiversity project to certain persons.

163. Subsection 25(5) of the NR Act has the effect that rules made for the purposes of subsection 23(1) or 24(1) of the NR Act must require the Regulator to give written notice of a decision to refuse to cancel the registration of a registered biodiversity project to the applicant.

164. Section 31 of the NR Act is made for the purposes of subsection 23(1) and 24(1) of the NR Act.

165. Subsections 31(1) and (2) have the combined effect that the Regulator must, as soon as practicable after making the decision, give written notice of a decision under section 30 of the NR Rules to cancel the registration of a registered biodiversity project to:

- the applicant; and
- if there is a relevant land registration official in relation to the project—the relevant land registration official; and
- if the decision is to cancel the project’s registration in the circumstance where a biodiversity certificate has been issued for the project and the holder of the biodiversity certificate is not the applicant—the holder of the certificate.

- if the project area is or includes a native title area and there is a registered native title body corporate for the native title area that is not a project proponent for the project—the registered native title body corporate.

166. Subsections 31(1) and (3) have the combined effect that the Regulator must, as soon as practicable after making the decision, give written notice of a decision to refuse to cancel the registration of a registered biodiversity project and the reasons for that decision, to the applicant.
167. Section 31 of the NR Rules complies with the requirements in subsections 25(4) and 25(5) of the NR Act.

Subdivision B – Unilateral cancellation of registration of biodiversity project

Section 32 – Operation of this Subdivision

168. Section 32 of the NR Rules clarifies that Subdivision B of Division 3 of Part 2 of the NR Rules (sections 32 to 43) is made for the purposes of subsections 26(1), 27(1), 28(1), 29(1), 30(1) and 31(1) of the NR Act and makes provision for or in relation the unilateral cancellation by the Regulator of the registration of a registered biodiversity project.

Section 33 – Unilateral cancellation—condition of registration has not been met

169. Subsection 26(1) of the NR Act provides that the rules may make provision for and in relation to empowering the Regulator to unilaterally cancel the registration of a registered biodiversity project, provided the requirements in subsections 26(2) and (3) of the NR Act are met.
170. Section 33 of the NR Rules is made for the purpose of subsection 26(1) of the NR Act and has the effect that (subject to the consultation requirements in sections 39 to 41 of the NR Rules), the Regulator may cancel the registration of a registered biodiversity project if:
- the registration is subject to a condition mentioned in subsection 17(2) (conditions about obtaining regulatory approvals), 18(2) Act (conditions about obtaining consents from eligible interest holders), or 18A(2) (condition about obtaining consent from registered native title body corporate); and
 - the Regulator is satisfied that the condition has not been met; and
 - at least 5 years have passed since the project was first registered.
171. Section 33 of the NR Rules, read with the consultation requirements in sections 39 to 41 of the NR Rules, complies with the requirements in subsections 26(2) and (3) of the NR Act.
172. This provision will ensure that, if the Regulator approves the registration of a biodiversity project for which not all required consents or regulatory approvals have been obtained, the project proponent would be obligated to take the means necessary to obtain such consents or approvals in the first five years of registration or risk the project's registration being cancelled. This would assist in ensuring that projects do not substantially progress without the

required consents. Such rules would enable, for example, the Regulator to cancel a project in circumstances where an eligible interest holder or a registered native title body corporate does not consent to the project going ahead as a registered biodiversity project or where the refusal of a necessary regulatory approval at Commonwealth, State or Territory level means the project cannot legally progress. This also ensures that the Register only reflects projects which are legally able to be carried out.

173. A decision of the Regulator made under section 34 of the NR Rules is a reviewable decision under paragraph 212(d) of the NR Act.

Section 34 – Unilateral cancellation—project not commenced, or unlikely to result in issuing of biodiversity certificate

174. Subsection 27(1) of the NR Act provides that the rules may make provision for and in relation to empowering the Regulator to cancel the registration of a registered biodiversity project, provided the requirements in subsections 27(2) and (3) of the NR Act are met.
175. Section 34 of the NR Rules is made for the purposes of subsection 27(1) of the NR Act and has the effect that (subject to the consultation requirements in sections 39 to 41 of the NR Act), the Regulator may cancel the registration of a registered biodiversity project if:
- a certificate has not yet been issued in respect of the registered biodiversity project; and
 - any of the following circumstances applies:
 - 5 years have passed since the project was first registered, and the Regulator is not satisfied that the project has begun to be carried out;
 - the Regulator is satisfied that the project is not being carried out;
 - the Regulator is satisfied that the project is unlikely to be carried out in a way that would result in a biodiversity certificate being issued in respect of the project.
176. Section 34 of the NR Rules, read with the consultation requirements in sections 39 to 41 of the NR Rules, complies with the requirements in subsections 27(2) and (3) of the NR Act.
177. This provision will ensure that, if the Regulator approves the registration of a biodiversity project which is then not carried out or is not carried out in a way that is likely to result in a biodiversity certificate, the Regulator is able to cancel the project and remove it from the Register. This will incentivise project proponents for registered biodiversity projects to take the necessary actions to carry out their proposed project in a timely manner to ensure the intended biodiversity outcomes are met. It also ensures that the Register only reflects projects which are, in practice, being carried out for and likely to result in a biodiversity outcome. This is a key integrity measure for the NR Act.
178. A decision of the Regulator made under section 34 of the NR Rules is a reviewable decision under paragraph 212(d) of the NR Act.

Section 35 – Unilateral cancellation—eligibility requirements not met etc.

179. Subsection 28(1) of the NR Act provides that the rules may make provision for and in relation to empowering the Regulator to cancel the registration of a registered biodiversity project, provided the requirements in subsections 28(2) and (3) of the NR Act are met.
180. Section 35 of the NR Rules is made for the purposes of subsection 28(1) of the NR Act and has the effect that (subject to the consultation requirements in sections 39 to 41 of the NR Rules), the Regulator may cancel the registration of a registered biodiversity project if satisfied that the project no longer meets any of the following criteria for the approval of the registration of a biodiversity project:
- paragraph 15(4)(a) of the NR Act – the project is being, or is to be, carried on in Australia;
 - paragraph 15(4)(b) of the NR Act – the project is of a kind specified in the methodology determination that covers the project;
 - paragraph 15(4)(c) of the NR Act – the activity period (if any) for the project has been worked out in accordance with the methodology determination that covers the project;
 - paragraph 15(4)(e) of the NR Act – the project meets the conditions that are set out in the methodology determination that covers the project for the purposes of paragraph 45(1)(b) of the NR Act (conditions that must be satisfied for the project to be registered);
 - paragraph 15(4)(n) of the NR Act – the project meets the eligibility requirements specified in section 12 of the NR Rules.
181. Section 35 of the NR Rules, read with the consultation requirements in sections 39 to 41 of the NR Rules, complies with the requirements in subsections 28(2) and (3) of the NR Act.
182. This provision will ensure that a biodiversity project that meets certain criteria for approval in subsection 15(4) of the NR Act at the time of registration cannot be later changed (post-registration) in a manner that means it no longer meets those requirements.
183. A decision of the Regulator made under section 35 is a reviewable decision under paragraph 212(d) of the NR Act.

Section 36 – Unilateral cancellation—project proponent ceases to be a fit and proper person

184. Subsection 29(1) of the NR Act provides that the rules may make provision for and in relation to empowering the Regulator to cancel the registration of a registered biodiversity project, provided the requirements in subsections 29(2) and (3) of the NR Act are met.
185. Section 36 of the NR Rules is made for the purposes of subsection 29(1) of the NR Act and has the effect that (subject to the consultation requirements in sections 39 to 41 of the NR Rules) the Regulator may cancel the registration of a registered biodiversity project if:

- the Regulator is satisfied that a project proponent for the project is not a fit and proper person in accordance with the requirements in Part 8 of the NR Act (whether there is only one or multiple project proponents for the project); and
- 90 days pass after the Regulator becomes so satisfied, and, at the end of that 90-day period, the Regulator is not satisfied that each project proponent for the project is a fit and proper person.

186. The note to section 36 directs the reader to sections 97, 98 and 99 of the NR Act for requirements in relation to fit and proper persons.
187. Section 36 of the NR Rules, read with the consultation requirements in sections 39 to 41 of the NR Rules, complies with the requirements in subsections 29(2) and (3) of the NR Act.
188. This provision will ensure that the Regulator is able to take appropriate action if satisfied that a project proponent for a registered biodiversity project is no longer a fit and proper person. A project proponent who was a fit and proper person when the project was registered may no longer be considered a fit and proper person if they, for example, are convicted of an offence or ordered to pay a pecuniary penalty under Commonwealth, State or Territory law that relates to the environment, climate change, work health or safety or fraudulent or dishonest conduct.
189. The purpose of providing an additional 90 days to have passed before the Regulator is able to cancel the biodiversity project's registration is to allow time for the person to resolve the relevant issue (if it can be resolved) or for an application to be made to change the identity of the project proponent (to remove the person who is no longer a fit and proper person). After 90 days, the Regulator will need to reassess whether each of the project proponents for the project (including any new project proponents) are fit and proper persons. This ensures that the cancellation of a project's registration is only done as a last resort when the project proponent who is no longer a fit and proper person cannot resolve the relevant issue or be replaced by another project proponent who is a fit and proper person.
190. A decision of the Regulator made under section 36 is a reviewable decision under paragraph 212(d) of the NR Act.

Section 37 – Unilateral cancellation—project proponent ceases to exist etc.

191. Subsection 30(1) of the NR Act provides that the rules may make provision for and in relation to empowering the Regulator to cancel the registration of a registered biodiversity project, provided the requirements in subsections 30(2) and (3) of the NR Act are met.
192. Section 37 of the NR Rules is made for the purposes of subsection 30(1) of the NR Act and has the effect that (subject to the consultation requirements in sections 39 to 41 of the NR Act) the Regulator may cancel the registration of a registered biodiversity project if:
- the Regulator is satisfied that any of the following circumstances exist:

- the project proponent has died or has ceased to exist, and there are no other project proponents for the project;
- the project is not being carried out (except to the extent that this is in accordance with the methodology determination that covers the project); and
- 90 days pass after the circumstances began to exist, and the Regulator is not satisfied, at the end of that 90-day period, that the circumstances have ceased to exist.

193. Section 37 of the NR Rules, read with the consultation requirements in sections 39 to 41 of the NR Rules, complies with the requirements in subsections 30(2) and (3) of the NR Act.

194. This provision will ensure that the Regulator can take action to cancel the registration of a biodiversity project if it no longer has a project proponent or is no longer being carried out. This ensures that the Register only reflects projects which are being carried out for the purpose of achieving a biodiversity outcome.

195. The purpose of requiring an additional 90 days to have passed before the Regulator is able to cancel the biodiversity project's registration is to allow time for a new project proponent to be specified for the project and for the project proponent to recommence carrying out the project. This will ensure that the cancellation of a project's registration is only done as a last resort when the project proponent cannot be replaced or where no project proponent is prepared to continue carrying out the project.

196. A decision of the Regulator made under section 37 is a reviewable decision under paragraph 212(d) of the NR Act.

Section 38 – Unilateral cancellation—false or misleading information

197. Subsection 31(1) of the NR Act provides that the rules may make provision for and in relation to empowering the Regulator to cancel the registration of a registered biodiversity project, provided the requirements in subsections 31(2) and (3) of the NR Act are met.

198. Section 38 of the NR Rules is made for the purposes of subsection 31(1) of the NR Act and has the effect that (subject to the consultation requirements in sections 39 to 41 of the NR Rules) the Regulator may cancel the registration of a registered biodiversity project if:

- information was given by a person to the Regulator in connection with the project; and
- the information was:
 - contained in an application under the NR Act; or
 - given in connection with an application under the NR Act; or
 - contained in a biodiversity project report; or

- contained in a notification under Division 2 of Part 9 of the NR Act; and
 - the Regulator is satisfied that the information was false or misleading in a material particular.
199. Section 38 of the NR Rules, read with the consultation requirements in sections 39 to 41 of the NR Rules, complies with the requirements in subsections 31(2) and (3) of the NR Act.
200. This provision will ensure that the Regulator can take action to cancel the registration of a biodiversity project if it becomes aware of false and misleading information having been provided about the project.
201. A decision of the Regulator made under section 38 is a reviewable decision under paragraph 212(d) of the NR Act. .

Section 39 – Requirement to consider submission from project proponent

202. Subsections 26(3), 27(3), 28(3), 29(3) and 31(3) of the NR Act require that rules made for the purposes of, respectively, subsections 26(1), 27(1), 28(1), 29(1), and 31(1) must require the Regulator to consult the project proponent for the project before deciding to cancel the registration of a registered biodiversity project.
203. Similarly, subsection 30(3) requires that rules made for the purposes of subsection 30(1) must require the Regulator, in a case where there is a project proponent for the project, to make reasonable efforts to consult the project proponent for the project before deciding to cancel the registration of a registered biodiversity project.
204. Section 39 of the NR Rules has the effect that the Regulator must not unilaterally cancel the registration of a registered biodiversity project under any of sections 33 to 38 of the NR Rules unless the Regulator has:
- given written notice of the proposed cancellation to the project proponent (if any) of the project; and
 - invited the project proponent to make submissions to the Regulator on the proposed cancellation before the end of the period of 28 days of receiving the notice; and
 - considered any relevant submissions that were received within that period.
205. The note following section 39 clarifies that if there are multiple project proponents, then the reference in this section to the project proponent is to be read as a reference to each project proponent. The note directs the reader to section 36 of the NR Act, which expressly sets this out.
206. Section 39 of the NR Rules complies with the requirements in subsections 26(3), 27(3), 28(3), 29(3) and 31(3) of the NR Act.

207. This provision ensures that procedural fairness, including the opportunity to be heard, is afforded to the project proponent (if there is one) before the Regulator makes a decision whether to unilaterally cancel the registration of the registered biodiversity project.

Section 40 – Requirement to consider pending application to vary registration to change identity of project proponent

208. Section 40 of the NR Rules has the effect that if:

- the project proponent for the registered biodiversity project has made an application under subsection 15(1) of the NR Rules to change the identity of the project proponent; and
- the Regulator has not made a decision on that application, or an appeal in relation to the Regulator’s decision on that application has not been finally determined,

then the Regulator must not decide to unilaterally cancel the registration of a registered biodiversity project under the following sections:

- section 36 of the NR Rules – dealing with the unilateral cancellation of the registration of a registered biodiversity project if the project proponent ceases to be a fit and proper person (in accordance with the fit and proper person requirements in Part 8 of the NR Act); and
- section 37 of the NR Rules – dealing with the unilateral cancellation of the registration of a registered biodiversity project if the project proponent ceases to exist or has died, or the project is not being carried out (except to the extent that the project not being carried out is consistent with the methodology determination that covers the project).

209. This provision ensures that the registration of a registered biodiversity project cannot be cancelled on the basis of the project proponent either no longer existing, or no longer being a fit and proper person, while there is a pending application to vary the registration to change the identity of the project proponent for that project. In those circumstances, the issue of whether the project proponent will be changed must be resolved first, as such a change may remove the basis for the Regulator’s proposed decision to cancel the registration of a registered biodiversity project.

Section 41 – Requirement to notify proposed project proponent

210. Section 41 of the NR Rules applies if the Regulator is proposing to unilaterally cancel the registration of a registered biodiversity project and is aware that another eligible person may wish to become a project proponent for that project. An *eligible person* is defined in section 7 of the NR Act to mean an individual, a body corporate, a trust, a corporation sole, a body politic, or a local governing body.

211. Subsection 41 requires the Regulator to take reasonable steps to notify, in writing, the eligible person who may wish to become a project proponent of the Regulator’s proposed cancellation of the registration of the registered biodiversity project.

212. The purpose of this provision is to give such a person the opportunity to request the project proponent apply for a variation to the project's registration to change the identity of the project proponent. If such an application is made, section 40 of the NR Rules would then operate to require the Regulator resolve the issue of whether the project proponent will be changed before deciding whether to cancel the project's registration, as such a change may remove the basis for the Regulator's proposed decision to cancel the project's registration.

Section 42 – When cancellation takes effect

213. Section 42 of the NR Rules provides that the unilateral cancellation of the registration of a registered biodiversity project has effect from the day after the notice of the decision is, under section 43 of the NR Rules, given to the project proponent or, if there is no project proponent:

- if there is a relevant land registration official in relation to the project—the relevant land registration official; and
- if the project area is or includes a native title area and there is a registered native title body corporate for the native title area that is not a project proponent for the project—the registered native title body corporate.

214. A *relevant land registration official* is defined in section 7 of the NR Act to mean, in relation to a biodiversity project that:

- is or was a registered biodiversity project; and
- is wholly or partly situated in a State or Territory;

the Registrar of Titles or other proper officer of the State or Territory in which the project area is wholly or partly situated.

Section 43 – Notification of decision

215. Section 32 of the NR Act has the effect that rules made for the purposes of subsections 26(1), 27(1), 28(1), 29(1), 30(1) or 31(1) must require the Regulator to give notice of the unilateral cancellation of the registration of a registered biodiversity project to certain persons.

216. Section 43 of the NR Rules has the effect that the Regulator must, as soon as practicable after making the decision, give written notice of a decision to cancel the registration of a registered biodiversity project to:

- the project proponent for the project, if any;
- if there is a relevant land registration official in relation to the project—the relevant land registration official; and
- if the biodiversity certificate is in effect in relation to the project, and is held by a person other than the project proponent—the holder of the certificate;

- if the project area is or includes a native title area and there is a registered native title body corporate for the native title area that is not a project proponent for the project—the registered native title body corporate.

217. Section 43 of the NR Rules complies with the requirements of section 32 of the NR Act.

Division 4 – Excluded biodiversity projects

Section 44 – Operation of this Division

218. Section 44 of the NR Rules clarifies that Division 4 of Part 2 of the NR Rules (sections 44 and 45) is made for the purposes of subsection 33(1) of the NR Act and specifies the kinds of biodiversity projects that are excluded biodiversity projects.

Section 45 – Excluded biodiversity projects – planting of known weed species

219. Subsection 33(1) of the NR Act has the effect that a biodiversity project is an *excluded biodiversity project* if it is a project of a kind specified in the rules. A project that is an excluded biodiversity project cannot be registered under the NR Act (see paragraph 15(4)(o) of the NR Act).

220. Section 45 of the NR Rules is made for the purposes of subsection 33(1) of the NR Act and specifies that a project that involves the planting of a species in an area where the species is a known weed species is an excluded biodiversity project.

221. Subsection 45(2) defines a *known weed species* to be either or both of:

- a species that is listed in the Weeds of National Significance list, published by the Centre for Invasive Species Solutions, as existing from time to time;
- a species that is declared or described as a known weed species or a pest (however described) under any of the following state and territory legislation:
 - the *Biosecurity Act 2015* (NSW);
 - the *Catchment and Land Protection Act 1994* (Vic);
 - the *Biosecurity Act 2014* (Qld);
 - the *Agriculture and Related Resources Protection Act 1976* (WA);
 - the *Biosecurity and Agriculture Management Act 2007* (WA);
 - the *Landscape South Australia Act 2019* (SA);
 - the *Biosecurity Act 2019* (Tas);
 - the *Pest Plants and Animals Act 2005* (ACT);

- the *Biosecurity Act 2023* (ACT);
 - the *Weeds Management Act 2001* (NT).
222. The note to subsection 45(2) explains that the Weeds of National Significance list could in 2024 be viewed on the Weeds Australia website (<https://www.weeds.org.au>).
223. Subsection 237(3) of the NR Act overrides subsection 14(2) of the *Legislation Act 2003* by allowing the Minister to make rules applying, adopting or incorporating any written material (with or without modification) as in force or existing from time to time. The Weeds of National Significance list is incorporated as existing from time to time, and is freely accessed on the Weeds Australia website (<https://www.weeds.org.au>).
224. The purpose of section 45 of the NR Rules is to address the material risk that allowing the registration of biodiversity projects that involve planting of a species in an area where it is a known weed species will have a material adverse impact on the environment and biodiversity (other than the kinds of biodiversity to be addressed by the project).
225. Weeds can damage natural landscapes, agricultural land, waterways and coastal areas by displacing native species, contributing to land degradation and reducing farm and forest productivity. According to the Australian Weed Strategy 2017-2027¹, weeds impact:
- the environment – weeds affect the structure and function of land-based and aquatic ecosystems, and impact negatively on native fauna and flora. They can displace native plant species and harbour pests and diseases. Weeds can increase the biomass of ecosystems leading to more intense bushfires, changing the composition and structure of native vegetation. Weeds can also threaten the integrity of nationally and globally significant sites, species and ecological communities, such as Ramsar-listed wetlands, cultural heritage sites and declared World Heritage properties;
 - the economy – weeds reduce the quantity and quality of Australia’s agricultural, horticultural and forestry products, which affects both industry and consumers. It is estimated that the cost to the Australian economy from the agricultural impacts of weeds is in the vicinity of \$4 billion per annum. This estimate includes the direct costs of weed control, reduction in yield and contamination of agricultural products. The economic impact of weeds on nature conservation, tourism and landscape amenity, although not quantified, is thought to be of a similar magnitude.
226. If permitted to spread to their full potential, most weed species can impact extensive areas of land, affecting multiple local, state and territory jurisdictions, often multiple agricultural industries and a variety of significant environmental assets. Effectively managing weeds requires a collaborative approach between landholders, community groups, industries and all levels of government, and is the purpose of the Australian Weed Strategy 2017-2027.

¹ Australian Weeds Strategy 2017-2027

227. The registration of a biodiversity project under the NR Act that involves the planting of a species in an area where it is a known weed species would be inconsistent with the Australian Weed Strategy 2017-2027 and various state and territory legislation. It would increase the risk that weeds will spread, threatening native ecosystems and undermining management actions to reduce their impact.

Part 3 – Multiple project proponents

228. Part 3 of the NR Act provides for arrangements for registered biodiversity projects that have more than one project proponent, including the obligations that may be imposed on and discharged by the multiple project proponents. For example, this provides flexibility for projects undertaken by landholders of adjacent properties to establish wildlife corridors. Part 3 of the NR Act also requires multiple project proponents to nominate a nominee for the service of documents, and for the taking of eligible voluntary actions.
229. Part 3 of the NR Rules is made for the purposes of Part 3 of the NR Act. Part 3 of the NR Rules (sections 46 and 47) empowers the Regulator to cancel the registration of a biodiversity project where a nomination made by multiple project proponents ceases to be in force, and the Regulator is not provided with a new nomination within 90 days.

Section 46 – Operation of this Part

230. Section 46 of the NR Rules provides that Part 3 of the NR Rules makes provision for or in relation to empowering the Regulator to cancel the registration of a registered biodiversity project if multiple project proponents have failed to nominate a nominee.

Section 47 – Unilateral cancellation—failure of multiple project proponents to nominate a nominee

231. Section 47 of the NR Rules is made for the purposes of subsection 42(1) of the NR Act.
232. If a registered biodiversity project has multiple project proponents, then those proponents are required to nominate a nominee for the service of documents and for the taking of certain actions in relation to the project.
233. Subsection 42(1) of the NR Act allows the rules to make provision for and in relation to empowering the Regulator to cancel the registration of a registered biodiversity project. Rules made for the purpose of subsection 42(1) can only empower the Regulator to cancel the registration of a biodiversity project where a nomination made by multiple project proponents under sections 37 or 38 ceases to be in force, and the Regulator is not provided with a new nomination within 90 days (subsection 42(2)).
234. This is consistent with the policy that, for projects with multiple project proponents, there must be a nominee at all times.
235. Subsection 47(1) of the NR Rules provides that the Regulator may cancel the registration of a registered biodiversity project if:

- there are 2 or more project proponents (the multiple project proponents) for the registered biodiversity project; and
- the multiple project proponents have nominated an eligible person under subsection 37(2) (nomination accompanying application for registration) or 38(2) (nomination other than at application for registration) of the NR Act; and
- the nomination ceases to be in force; and
- 90 days pass, and no new nomination under subsection 37(2) or 38(2) of the NR Act is made by the multiple project proponents; and
- the Regulator has considered any relevant submissions received in response to notices given by the Regulator under subsection 47(2) of the NR Rules.

236. Subsections 47(2) and (3) of the NR Rules have the combined effect that the Regulator is required to consult with the multiple project proponents before deciding to cancel the registration, including providing 28 days for the multiple project proponent to make submissions on the proposed cancellation. This is consistent with the requirement in subsection 42(3) of the NR Act and ensures that the principles of natural justice are complied with.

237. Subsection 47(4) requires the Regulator to give notice of the cancellation to:

- each multiple project proponent; and
- if there is a relevant land registration official in relation to the project – the relevant land registration official; and
- if a biodiversity certificate is in effect in relation to the project, and is held by a person other than the project proponent – the holder of the certificate; and
- if the project area for the project is, or includes, a native title area and there is a registered native title body corporate for the native title area who is not a project proponent – the registered native title body corporate.

238. This is consistent with subsection 42(4) of the NR Act, which requires the Regulator to give notice of the cancellation of the project's registration to the relevant land registration official (if any) and the holder of the certificate (if any, and where the holder is a different person to the project proponent), and also allows the rules to prescribe additional persons to whom the Regulator must give notice of the cancellation.

239. A decision under section 47 of the NR Rules to cancel the registration of a registered biodiversity project is a reviewable decision (see paragraph 212(d) of the NR Act).

Part 4 – Methodology determinations

240. Part 4 of the NR Act relevantly establishes a framework and process for making, varying or revoking methodology determinations. Methodology determinations are legislative instruments that set requirements on how registered biodiversity projects are to be carried out. Methodology determinations can be made, varied or revoked by the Minister after consideration of certain matters, including advice from the Nature Repair Committee.
241. Part 4 of the NR Rules (sections 48 to 55) is made for the purposes of Part 4 of the NR Act. Part 4 of the NR Rules provides for rules about when a varied or ceased methodology determination will or will not apply to an existing registered biodiversity project. It also prescribes requirements for the Regulator to consult with an eligible person who has applied for registration of a biodiversity project that is proposed to be covered by a particular methodology determination, where that methodology determination is varied or has ceased prior to their application for registration being finally decided.

Division 1 – Variation of methodology determinations

Section 48 – Operation of this Part

242. Section 48 of the NR Rules clarifies that Division 1 of Part 4 of the NR Rules (sections 48 to 51) is made for the purposes of Subdivision B of Division 2 of Part 4 of the NR Act and makes provision in relation to the variation of methodology determinations.

Section 49 – When variation applies, or does not apply, to existing registered biodiversity project – general rule

243. Section 48 of the NR Act allows the Minister, by legislative instrument, to vary a methodology determination.
244. Section 49 of the NR Act allows for the rules to set conditions that need to be met for a variation of a methodology determination to apply (see subsection 49(2)), or to not apply (see subsection 49(3)), to an existing registered biodiversity project that is covered by the methodology determination that has been varied.
245. Subsection 49(1) of the NR Rules is made for the purposes of subsection 49(2) of the NR Act. Subsection 49(1) has the effect that a variation of a methodology determination will apply to an existing registered biodiversity project that is covered by that methodology determination if:
- the project’s registration is in effect when the variation takes effect; and
 - subsection 49(2) does not apply to the project.
246. The note following subsection 49(1) explains that an existing registered biodiversity project that would otherwise be covered by subsection 49(1) will not be required to comply with the varied methodology determination if the Regulator determines, under section 50 of the NR Rules, that the variation does not apply to the particular project.

247. Subsection 49(2) of the NR Rules is made for the purposes of subsection 49(3) of the NR Act. Subsection 49(2) has the effect that a variation of a methodology determination will not apply to an existing registered biodiversity project that is covered by that methodology determination if:
- the project's registration is in effect at the time the variation takes effect; and
 - a period of two years after the variation came into effect has not ended; and
 - before the variation takes effect:
 - a biodiversity certificate was issued for the project; or
 - an application for a biodiversity certificate for the project was made, but not yet determined.
248. Where a variation of a methodology determination does not apply to an existing registered biodiversity project that is covered by that methodology determination, that project will continue to be covered (and must comply with) the methodology determination as it was in effect prior to the variation.
249. The two-year grace period allows time for the project proponent to make any necessary changes to the registered biodiversity to ensure that the project complies with the methodology determination, as varied.
250. Once a biodiversity certificate has been issued for a registered biodiversity project, or once an application for the issue of a biodiversity certificate has been made, the project would be at an advanced stage that is, or is considered by the applicant, to be achieving the stated biodiversity outcome for that project. It would be inappropriate to require a change in the project at this stage as a result of a variation of the methodology determination covering the project.

Section 50 – Regulator may determine that variation does not apply to existing registered biodiversity project

251. Section 48 of the NR Act allows the Minister, by legislative instrument, to vary a methodology determination.
252. Subsection 49(4) of the NR Act provides that the rules may empower the Regulator to determine, on application by the project proponent for a registered biodiversity project that if:
- a methodology determination covers the registered biodiversity project; and
 - the methodology determination is varied; and
 - the project's registration is in effect at the time the variation takes effect; and

- the conditions specified in the rules are satisfied,

the variation of the methodology determination does not apply to the registered biodiversity project.

253. Subsection 49(5) of the NR Act provides that the rules may make provision for and in relation to any of the following matters (relevantly):

- the approval by the Regulator of a form for such an application; and
- information that must accompany such an application; and
- documents that must accompany such an application.

254. Section 50 of the NR Rules is made for the purposes of subsections 49(4) and (5) of the NR Act.

255. This means that while section 49 of the NR Rules sets out the general rules about whether a varied methodology determination will, or will not, apply to an existing registered biodiversity project, section 50 of the NR Rules empowers the Regulator to determine, on application by the project proponent, whether the variation of a methodology determination will apply to a particular registered biodiversity project (ie, on a case-by-case basis).

256. Subsection 50(2) allows the project proponent of a registered biodiversity project to apply to the Regulator to determine that a variation of a methodology determination that covers the project does not apply to the project. The application must be in writing and in the approved form, and must include evidence that the criteria in subsection 50(5) have been met.

257. Upon receiving the application, the Regulator must consider the application and determine whether or not the variation of the methodology determination that covers the project (the applicable methodology determination) will apply to the project (subsection 50(4)).

258. Subsection 50(5) has the effect that the Regulator can only determine that the variation does not apply to the project if satisfied that:

- the applicable methodology determination covers the project; and
- the applicable methodology determination is varied; and
- the project's registration is in effect at the time the variation takes effect; and
- if there are multiple project proponents for the project – the application is made by the nominee in relation to the project on behalf of the multiple project proponents; and
- the effect of section 49 of the NR Rules is that the variation applies, or will apply, to the project; and

- if the variation applies to the project, it is likely that:
 - the biodiversity outcome for the project would not be achieved; or
 - practical difficulties would arise due to the advanced nature of the project; or
 - the costs of applying the variation to the project would be unreasonable in the circumstances.

259. This provision would empower the Regulator to consider, on a case-by-case basis, whether the variation of a methodology determination covering an existing registered biodiversity project would have inappropriate adverse effects on the costs, governance or biodiversity outcomes of a project.

260. Subsection 50(6) would require the Regulator to take all reasonable steps to make the determination within 90 days after the application is made. The exception is where a request for further information under section 128 of the NR Rules is made – in this case, the timeframe for the decision is 90 days after the applicant gave the Regulator the requested further information.

261. Subsection 50(7) requires the Regulator to, as soon as practicable after making the decision, give the applicant written notice of the decision. If the decision is to refuse the application, the Regulator must also give reasons for the decision to the applicant.

Section 51 – Effect of variation on application for registration of biodiversity project

262. Section 48 of the NR Act allows the Minister, by legislative instrument, to vary a methodology determination. Section 49 of the NR Act sets out when a variation to a methodology determination takes effect and how the variation applies to existing registered biodiversity projects or existing applications for registration of biodiversity projects.

263. Subsection 49(7) of the NR Act relevantly provides that:

- if an application for registration of a biodiversity project has been made but not decided; and
- the methodology determination proposed to cover the project in the application is varied,

then the varied methodology determination will apply to the application.

264. In other words, the Regulator is required to assess the application as if the application proposes that the varied methodology determination will cover the project, not the methodology determination as it was at the time the application was made. There would be no ability for a project covered by the original methodology determination to be newly registered after the variation commences. This is appropriate, as the project has not yet commenced.

265. Subsection 49(8) of the NR Act provides that the rules may provide for the Regulator to notify the applicant if their application is affected by a variation of a methodology determination and to give that person an opportunity to either withdraw or vary their application.
266. Section 51 of the NR Rules is made for the purposes of subsection 49(8) of the NR Act.
267. Section 51 of the NR Rules requires that, if an application for registration of a biodiversity project is affected by a variation of a methodology determination in the circumstances set out in subsection 49(7) of the NR Act, the Regulator must:
- notify the applicant, in writing, that the application is affected by the varied methodology determination;
 - provide a copy, or electronic link to, the varied methodology determination; and
 - give the applicant 28 days after the notice is given to withdraw or vary the application before Regulator considers and makes a decision on the application.
268. The note to section 51 explains that a fresh application may be made if the application is withdrawn and directs the reader to subsection 14(2) of the NR Act.
269. The purpose of section 51 of the NR Rules is to provide applicants with an opportunity to assess whether they want the varied methodology determination to cover the project or, potentially, to change the methodology determination that is proposed to cover the project to another methodology determination that is in effect. Alternatively, the applicant could choose to withdraw the application and have their application fee refunded under subsection 49(9) of the NR Act.

Division 2 – Cessation of effect of methodology determinations

Section 52 – Operation of this Division

270. Section 52 of the NR Rules provides that Division 2 of Part 4 of the NR Rules (sections 52 to 55) is made for the purposes of Subdivision C of Division 2 of Part 4 of the NR Act and makes provision in relation to the cessation of the effect of methodology determinations.

Section 53 – When methodology determination continues to apply to registered biodiversity project – general rule

271. Section 51 of the NR Act allows the Minister, by legislative instrument, to revoke a methodology determination. Section 52 of the NR Act provides for the consequences of when a methodology determination ceases to have effect.
272. Subsection 52(1) of the NR Act allows for the rules to set out conditions that need to be met for a methodology determination that has ceased to continue to cover a registered biodiversity project as though it had not ceased.
273. Section 53 of the NR Rules is made for the purposes of subsection 52(1) of the NR Act.

274. Section 53 has the effect that a ceased methodology determination will continue to cover a registered biodiversity project as if it had not ceased if any of the following circumstances applies:

- before the determination ceases to have effect, a biodiversity certificate was issued for the project; or
- before the determination ceases to have effect, an application for a biodiversity certificate was made, but not determined; or
- there is no other methodology determination in effect that covers that kind of project.

Section 54 – Regulator may determine that methodology determination continues to apply to registered biodiversity project

275. Section 51 of the NR Act allows the Minister, by legislative instrument, to revoke a methodology determination. Section 52 of the NR Act provides for the consequences of when a methodology determination ceases to have effect.

276. Subsection 52(2) of the NR Act allows the Regulator to determine, on application by the project proponent, that if:

- the methodology determination that covers the project ceases to have effect; and
- the conditions specified in the rules are satisfied,

then, despite the cessation, the methodology determination that has ceased will continue to cover the project as though it had not ceased.

277. Subsection 52(3) of the NR Act provides that the rules may make provision for and in relation to any of the following matters (relevantly):

- the approval by the Regulator of a form for such an application; and
- information that must accompany such an application; and
- documents that must accompany such an application.

278. Section 54 is made for the purposes of subsections 52(2) and (3) of the NR Act.

279. This means that while section 53 of the NR Rules sets out the general rules about when a ceased methodology determination will continue to cover an existing registered biodiversity project, section 54 of the NR Rules empowers the Regulator to determine, on application by the project proponent, whether a ceased methodology determination will continue to cover a particular registered biodiversity project (i.e., on a case-by-case basis).

280. Subsection 54(2) allows a project proponent to apply to the Regulator for the Regulator to determine that, despite the cessation of the methodology determination that covers the project, that the determination continues to cover the project as if the determination had not ceased. The application must be in writing and in the approved form, and must include evidence that the criteria in subsection 54(5) have been met.
281. Upon receiving the application, the Regulator must consider the application and determine whether the ceased methodology will continue to cover the project or does not continue to cover the project (subsection 54(4)).
282. Subsection 54(5) has the effect that the Regulator can only determine that the ceased methodology determination continues to cover the project if satisfied that:
- the determination has ceased to have effect; and
 - if there are multiple project proponents for the project – the application is made by the nominee in relation to the project on behalf of the multiple project proponents; and
 - the effect of section 53 is that the determination does not continue to cover the project; and
 - if the project were covered by a different methodology determination, it is likely that:
 - the biodiversity outcome for the project would not be achieved; or
 - practical difficulties would arise due to the advanced nature of the project; or
 - the costs of applying a different methodology determination would be unreasonable in the circumstances.
283. This provision would empower the Regulator to consider, on a case-by-case basis, whether the cessation of a methodology determination covering an existing registered biodiversity project would have inappropriate adverse effects on the costs, governance or biodiversity outcomes of a project.
284. Subsection 54(6) would require the Regulator to take all reasonable steps to make the determination within 90 days after the application is made. The exception is where a request for further information under section 128 of the NR Rules is made – in this case, the timeframe for the decision is 90 days after the applicant gave the Regulator the requested further information.
285. Subsection 54(7) requires the Regulator to, as soon as practicable after making the decision, give the applicant written notice of the decision. If the decision is to refuse the application, the Regulator must also give reasons for the decision to the applicant.

Section 55 – Effect of cessation on application for registration of biodiversity project

286. Section 45 of the NR Act allows the Minister to, by legislative instrument, make a methodology determination. Methodology determinations cover a kind of biodiversity project and sets requirements for how that project is to be implemented, including the obligations applying to the person responsible for the project under the NR Act.
287. Section 51 of the NR Act allows the Minister, by legislative instrument, to revoke a methodology determination.
288. Section 53 of the NR Act requires the Regulator to refuse to approve the registration of a biodiversity project if the methodology determination that is specified in the application to cover the project ceases to have effect before the project is registered. Subsection 53(3) allows the rules to provide for the Regulator to notify the applicant if their application is affected by a methodology determination that has ceased to have effect and to give that person an opportunity to either withdraw or vary their application.
289. Section 55 of the NR Rules is made for the purposes of subsection 53(3) of the NR Act.
290. Section 55 of the NR Rules requires that, if an application made under subsection 11(1) of the NR Act to the Regulator to approve the registration of a biodiversity project is affected by the cessation of a methodology determination, then the Regulator must:
- notify the applicant, in writing, that the Regulator is proposing to refuse the application; and
 - give the applicant 28 days after the notice is given to withdraw or vary the application before Regulator refuses the application.
291. There is no opportunity for a project to be registered as being covered by a methodology determination that has ceased prior to the project's registration.
292. The purpose of section 55 is to provide applicants with an opportunity to assess whether there is another methodology determination in effect that would be suitable to cover the project, or alternatively, to withdraw the application and have their application fee refunded under subsection 53(4) of the NR Act.

Part 5 – Biodiversity certificates

293. Part 5 of the NR Act establishes biodiversity certificates, which is a new form of tradeable personal property. It sets out the process and requirements for applying for and issuing biodiversity certificates for registered biodiversity projects, as well as provisions relating to the ownership and transfer of biodiversity certificates. A biodiversity certificate can only be issued for a registered biodiversity project that is sufficiently progressed to have resulted in, or be likely to result in, the intended biodiversity outcome.

294. Part 5 of the NR Rules (sections 56 to 60) is made for the purposes of Part 5 of the NR Act and sets out requirements relating to the information and documents that must be provided with an application for a biodiversity certificate for a registered biodiversity project. Part 5 also provides for additional eligibility requirements that must be met for a biodiversity certificate to be issued, and for matters that must be contained in a biodiversity certificate.

Section 56 – Operation of this Part

295. Section 56 of the NR Rules clarifies that Part 5 of the NR Rules (sections 56 to 60) is made for the purposes of Part 5 of the NR Act and makes provision for or in relation to the issue of biodiversity certificates for registered biodiversity projects.

Section 57 – Application for biodiversity certificate—information and documents

296. Section 67 of the NR Act allows the project proponent of a registered biodiversity project to apply to the Regulator for the issue of a biodiversity certificate in respect of the project, provided certain circumstances are met. A biodiversity certificate is tradeable personal property.

297. A biodiversity certificate cannot be issued unless the Regulator is satisfied that any conditions imposed on the registration of a registered biodiversity project under sections 17, 18 or 18A of the NR Act (which relate to obtaining regulatory approvals, consent from eligible interest holders and consent from registered native title body corporate, respectively) are met (see paragraphs 70(2)(c), (d) and (e) of the NR Act).

298. Section 68 of the NR Act sets out the requirements for an application for a biodiversity certificate made under section 67 of the NR Act. Paragraph 68(1)(c) of the NR Act provides that the application must be accompanied by such information as is specified in the rules. Paragraph 68(1)(g) of the NR Act requires the application to be accompanied by such other documents as specified in the rules.

299. Section 57(1) of the NR Rules is made for the purposes of paragraphs 68(1)(c) and (g) of the NR Act. This is confirmed by subsection 57(1).

300. Subsection 57(2) requires the following information to be included in, and documents to accompany, an application for the issue of a biodiversity certificate:

- a statement that the applicant is the project proponent for the project;
- if there are multiple project proponents for the project—a statement that the applicant is the nominee (for the purposes of Part 3 of the NR Act) in relation to the project and is making the application on behalf of the multiple project proponents;
- for each project proponent for the project—evidence about any circumstance or event that:

- has occurred since the project was registered that is relevant to a matter in section 97, 98, 99 or 99A of the NR Act that the Regulator must consider in determining whether the project proponent is a fit and proper person; and
- has not previously been notified to the Regulator;
- the account number and holder of the Register account in which the certificate is proposed to be held;
- the name of the project;
- the unique identifier assigned for the project;
- a statement that the project is sufficiently progressed to have resulted in, or be likely to result in, the biodiversity outcome for the project, and evidence supporting that statement. This is important because the Regulator can only issue a biodiversity certificate for the project if satisfied that the project is sufficiently progressed to have resulted in, or be likely to result in, the biodiversity outcome for the project (see paragraph 70(2)(f) of the NR Act);
- a statement that the preconditions for making the application set out in subsection 67(2) of the NR Act have been met, and evidence supporting that statement;
- a statement that the eligibility requirements specified in section 59 of the NR Rules are met, and evidence supporting that statement. This is important because the Regulator can only issue a biodiversity certificate for the project if satisfied that any eligibility requirements specified for the purposes of paragraph 70(2)(g) of the NR Act are met;
- the methodology determination (the applicable methodology determination) that covers the project;
- if the applicable methodology determination specifies conditions for the purposes of paragraph 45(1)(e) of the NR Act—a statement that those conditions are met, and evidence supporting that statement. This is important because the Regulator can only issue a biodiversity certificate for the project if satisfied that any conditions in the methodology determination for the purposes of paragraph 45(1)(e) of the NR Act are met (see paragraph 70(2)(h) of the NR Act);
- a statement that the category A biodiversity project report accompanying the application meets the requirements in section 103 of the NR Act (which sets out requirements for Category A biodiversity project reports);
- if a category B biodiversity project report has been prepared in respect of the project—a copy of that report;

- if the project proponent is required, under paragraph 59(2)(b) of the NR Rules, to obtain a regulatory approval (relating to regulatory approvals required following the variation of the project's registration), or by a condition imposed under section 17 of the NR Act (relating to regulatory approvals that have not yet been obtained at the time the project was registered):
 - a statement that the approval has been obtained; and
 - the regulatory authority that has issued the approval; and
 - a copy of the approval; and
 - the reference number (however described) for the approval;
- if the project proponent is required, under paragraph 59(2)(c) of the NR Rules, to obtain a consent from an eligible interest holder (relating to consent from an eligible interest holder following the variation of the project's registration), or by a condition imposed under section 18 of the NR Act (relating to consent from eligible interest holders that have not yet been obtained at the time project was registered):
 - a statement that the consent has been obtained; and
 - the eligible interest holder that has granted the consent; and
 - a copy of the written consent. If the written consent is set out in a registered indigenous land use agreement, then a copy of relevant parts of the agreement that sets out the consent may be provided instead of the written consent (see subsection 57(3));
- if the project proponent is required, under paragraph 59(2)(d) of the NR Rules, to obtain a consent from a registered native title body corporate (relating to consent from a registered native title holder that is required following a variation of the project's registration), or by a condition imposed under section 18A of the NR Act (relating to consent from a registered native title holder that has not yet been obtained at the time the project is registered):
 - a statement that the consent has been obtained; and
 - the registered native title body corporate that has granted the consent; and
 - a copy of the written consent.

301. If any required written consents are set out in a registered indigenous land use agreement, then a copy of relevant parts of the agreement that sets out the consent may be provided instead of the written consent (see subsection 57(3)).

302. By requiring persons to provide the information and documents under section 57(2), a small amount of personal information may be collected, including the names of persons from whom relevant consent is required to be obtained. To the extent that any information collected in relation to an application for the issue of a biodiversity certificate is personal information within the meaning of the Privacy Act, that information must be collected, stored, used and disclosed in accordance with the Australian Privacy Principles.
303. Collection of this information is necessary and appropriate for assessing whether a biodiversity certificate in respect of a registered biodiversity project should be issued. Integrity in the process of issuing biodiversity certificates is fundamental to the functioning of the Nature Repair Market, since certificates allow unique biodiversity outcomes associated with individual projects to be described according to a consistent set of attributes, which supports the market to inform purchasing decisions.

Section 58 – Application for biodiversity certificate—audit reports

304. Section 67 of the NR Act allows the project proponent of a registered biodiversity project to apply to the Regulator for a biodiversity certificate in respect of the project, provided certain conditions are met. A biodiversity certificate is tradeable personal property.
305. Section 68 of the NR Act sets out the requirements for an application for a biodiversity certificate made under section 67 of the NR Act.
306. Paragraph 68(1)(e) of the NR Act relevantly provides that the rules may specify that:
- an application for a biodiversity certificate is subject to audit under the NR Act; and
 - where an application for a biodiversity certificate is subject to audit under the NR Act – that the application must be accompanied by an audit report that is prescribed by the rules (subparagraph 68(1)(e)(i) of the NR Act).
307. Section 58 of the NR Rules is made for the purposes of paragraph 68(1)(e) of the NR Act.
308. Subsection 58(1) of the NR Rules has the effect that all applications for a biodiversity certificate in respect of a registered biodiversity project are subject to audit.
309. Audits under the NR Act, known as biodiversity audits, are carried out by audit team leaders that are registered greenhouse and energy auditors under the *National Greenhouse and Energy Reporting Act 2007* (NGER Act). The NGER Act audit framework comprises two different types of audits: assurance engagements and verification engagements.
310. Subsection 58(2) sets out requirements for the audit report that must accompany each application made under sections 67 of the NR Act for the issuing of a biodiversity certificate. The requirements are:
- that the audit report is an assurance engagement report; and

- that the assurance engagement report includes information as to whether, in the view of the auditor, the requirements under the NR Act, the NR Rules, and the methodology determination that covers the project, have been met in respect of the project.
311. The term assurance engagement report is defined in section 5 of the NR Rules to have the same meaning as in the *National Greenhouse and Energy (Audit) Determination 2009* (NGER Audit Determination). The NGER Audit Determination, in turn, defines assurance engagement report to mean an audit report of a kind mentioned in subsection 75(1) of the NGER Act. Subsection 75(1) of the NGER Act allows the Minister to determine, by legislative instrument, requirements to be met by registered greenhouse and energy auditors in, relevantly, preparing audit reports. The Audit Determination is made for the purposes of subsection 75(1) of the NGER Act and sets out requirements in relation to an assurance engagement report.
312. In an assurance engagement, the audit team leader provides an independent opinion as to the reliability, accuracy and completeness of the matter being audited. The audit team leader uses professional judgment in preparing for and carrying out the audit and preparing the assurance engagement report. There are two kinds of assurance engagement audits:
- a reasonable assurance engagement – the audit team leader, if appropriate, gives an opinion expressed in the positive that there is no misstatement in the matter being audited that is material or pervasive enough to affect the matter being audited as a whole (a reasonable assurance conclusion); and
 - a limited assurance engagement – the audit team leader, if appropriate, gives an opinion expressed in the negative that there is no misstatement in the matter being audited that is material or pervasive enough to affect the matter being audited as a whole (a limited assurance conclusion).
313. The effect of this provision is to require all applications for a biodiversity certificate in respect of a registered biodiversity project to be subject to an assurance engagement audit, and to require all applications to be accompanied by an assurance engagement audit report.
314. The assurance engagement must be a reasonable assurance engagement, and the audit report must contain either a reasonable assurance conclusion or a qualified reasonable assurance conclusion (within the meaning of the NGER Audit Determination) (see paragraph 59(2)(a)).

Section 59 – Issue of biodiversity certificate—eligibility requirements

315. Section 70 of the NR Act sets out requirements in relation to the issue of a biodiversity certificate for a registered biodiversity project. Subsection 70(2) of the NR Act requires the Regulator to issue a biodiversity certificate if satisfied that the criteria in that subsection are met. Paragraph 70(2)(g) of the NR Act has the effect that to issue a biodiversity certificate, the Regulator must be satisfied that any additional eligibility requirements specified in the rules are met.

316. Section 59 of the NR Rules is made for the purposes of paragraph 70(2)(g) of the NR Act and specifies additional eligibility requirements of which the Regulator must be satisfied before issuing a biodiversity certificate for a registered biodiversity project.
317. Paragraph 59(2)(a) requires the Regulator to be satisfied that the audit report accompanying the application sets out, for each of the matters audited, either:
- a reasonable assurance conclusion (within the meaning of the NGER Audit Determination); or
 - a qualified reasonable assurance conclusion (within the meaning of the NGER Audit Determination).
318. The term *reasonable assurance conclusion* is defined in subsection 3.17(2) of the NGER Audit Determination to mean, in relation to a reasonable assurance engagement, the giving of a conclusion of the audit team leader's opinion, expressed in the positive, that there is no misstatement in the matter being audited that is material or pervasive enough to affect the matter being audited as a whole. The note to subsection 3.17(2) sets out the following examples of a reasonable assurance conclusion:
- 'In my opinion, the audited body has prepared the matter to be audited, in all material respects, in compliance with the requirements of the NGER legislation';
 - 'In my opinion, the audited body has reported its greenhouse gas emissions, energy production and energy consumption, in all material respects, in compliance with the NGER legislation'.
319. The term *qualified reasonable assurance engagement* is defined in subsection 3.17(3) of the NGER Audit Determination to mean, in relation to a reasonable assurance engagement, the giving of a conclusion of the audit team leader's opinion, expressed in the positive, that:
- there are one or more misstatements in the matter being audited that are material but not pervasive enough to affect the matter being audited as a whole; or
 - there is insufficient evidence in relation to one or more aspects of the matter being audited, but although the lack of evidence may be material it is not pervasive enough to affect the matter being audited as a whole.
320. The note to subsection 3.17(3) of the Audit Determination sets out the following examples of a qualified reasonable assurance conclusion (where 'X' represents any misstatement that is material but not pervasive enough to affect matters as a whole):
- 'In my opinion, except for 'X', the audited body has prepared the matter to be audited, in all material respects, in compliance with the NGER legislation';

- ‘In my opinion, except for ‘X’, the audited body has reported its greenhouse gas emissions, energy production and energy consumption, in all material respects, in compliance with the NGER legislation’.
321. Paragraphs 59(1)(b) to (d) of the NR Rules specify additional eligibility requirements that are relevant to registered biodiversity projects where the project’s registration has been varied – either to change the project area or the identity of the project proponent.
 322. Paragraph 59(1)(b) will apply where the project’s registration has been varied to either change the identity of the project proponent for the project (under section 16 of the NR Rules) or to add a new area to the project area for the project (under section 20 of the NR Act). Where this is the case, it may be that either the change in project proponent, or the change in project area, necessitates that an additional regulatory approval is required (under Commonwealth, or State or Territory, legislation). Where an additional regulatory approval is required, the effect of paragraph 59(1)(b) is that the Regulator can only issue a biodiversity certificate for the project if the Regulator is satisfied that the additional regulatory approval has been obtained.
 323. The purpose of this eligibility requirement is to replicate the effect of the requirement in paragraph 70(2)(c) of the NR Act that a biodiversity certificate cannot be issued for a project unless any condition imposed on the project’s registration under section 17 (obtaining regulatory approvals) have been met. As the NR Act does not enable conditions under section 17 to be imposed post-registration, this eligibility requirement will achieve the same policy intent of ensuring that all required regulatory approvals have been obtained prior to a biodiversity certificate being issued for the registered biodiversity project.
 324. Paragraph 59(1)(c) will apply where the project’s registration has been varied to add a new area to the project area for the project (under section 20 of the NR Act). Where this is the case, it may be that there is an eligible interest holder (within the meaning of Part 7 of the NR Act) for that new area of the project area that was not previously an eligible interest holder in relation to the project.
 325. The effect of paragraph 59(1)(c) is that the Regulator can only issue a biodiversity certificate for the project if the Regulator is satisfied that written consent to the project’s registration from the (new) eligible interest holder has been obtained.
 326. The consent of some eligible interest holders in relation to the new area of the project area will be required before the project’s registration can be varied to add the new area. This is because the consent of some eligible interest holders to carrying out the project on the relevant land must be obtained prior to registration (under subsection 15(4) and paragraph 15(6)(a) of the NR Act) and this requirement is replicated in the criteria for approving the variation of the project’s registration (see paragraph 20(2)(a) of the NR Rules).
 327. In contrast, in some cases, eligible interest holder consent will not be required to vary the project’s registration to add a new area to the project area. This is the case where the (new) eligible interest holder is of a category for which a condition under section 18 (requiring

consent be obtained before a biodiversity certificate could be issued for the project) could have been imposed on the project's registration, had the (new part of) the project area been part of the project area at the time the project was registered.

328. Where the latter is the case, the effect of paragraph 59(1)(c) is to require the project proponent to obtain consent to registration of the project prior to a biodiversity certificate being issued for the project.
329. The purpose of this eligibility requirement is to replicate the effect of the requirement in paragraph 70(2)(d) of the NR Act that a biodiversity certificate cannot be issued for a project unless any condition imposed on the project's registration under section 18 of the NR Act (obtaining consents from eligible interest holders) have been met. As the NR Act does not enable conditions under section 18 to be imposed post-registration, this eligibility requirement will achieve the same policy intent of ensuring that all required eligible interest holder consents have been obtained prior to a biodiversity certificate being issued for the registered biodiversity project.
330. Paragraph 59(1)(d) will apply where the project's registration has been varied to add a new area to the project area for the project (under section 20 of the NR Act) that is or include a native title area, where:
- that native title area was not previously included in the project area for the project; and
 - there is a registered native title body corporate for the (new) native title area.
331. The effect of paragraph 59(1)(d) is that the Regulator can only issue a biodiversity certificate for the project if the Regulator is satisfied that written consent to the carrying out of the project on or in the native title area as a registered biodiversity project by the project proponent has been obtained from the registered native title body corporate for the (new) native title area.
332. Under subsection 15(4) and paragraph 15(6)(b) of the NR Act, where the project area for a registered biodiversity project is or includes a native title area, and there is a registered native title body corporate for the native title area, the project proponent is required, prior to the project's registration, to obtain the written consent of the registered native title body corporate to either the project's registration or to the carrying out of the project on or in the native title area as a registered biodiversity project by the project proponent. Where pre-registration consent is only given to the project's registration, section 18A of the NR Act has the effect that there is a condition imposed on the project's registration to the effect that the written consent of the registered native title body corporate to the carrying out of the project on or in the native title area as a registered biodiversity project by the project proponent is required before a biodiversity certificate can be issued for the project (see also paragraph 70(2)(e) of the NR Act).
333. Paragraph 20(2)(a) of the NR Rules has the effect that the requirements in subsection 15(4) and paragraph 15(6)(b) of the NR Act are picked up to apply to variations of the project's

registration to add a new part of the project area that is or includes a native title area. This means that, before the variation is approved, the project proponent must have obtained the written consent of the native title body corporate to either the project's registration or to the carrying out of the project on or in the (new) native title area as a registered biodiversity project by the project proponent.

334. Where the consent obtained prior to the variation was only to the project's registration, the effect of paragraph 59(1)(d) is to require the project proponent to obtain the written consent of the registered native title body corporate to the carrying out of the project on or in the (new) native title area as a registered biodiversity project by the project proponent before a biodiversity certificate can be issued for the project registration of the project.
335. The purpose of this eligibility requirement is to replicate the effect of the requirement in paragraph 70(2)(e) of the NR Act that a biodiversity certificate cannot be issued for a project unless any condition imposed on the project's registration under section 18A (obtaining consent from registered native title body corporate) have been met. As the NR Act does not enable conditions under section 18A to be imposed post-registration, this eligibility requirement will achieve the same policy intent of ensuring that consent from the registered native title body corporate to the carrying out of the project on or in the (new) native title area as a registered biodiversity project by the project proponent has been obtained prior to a biodiversity certificate being issued for the registered biodiversity project
336. Paragraphs 59(2)(e) and (f) have the combined effect that the Regulator can only issue a biodiversity certificate in respect of a registered biodiversity project if satisfied that:
- each category B biodiversity project report required to be given to the Regulator about the project has been given to the Regulator, and
 - the project proponent has complied with the requirements in the NR Act, the NR Rules and the methodology determination that covers the project that relates to each category B biodiversity project report.

Section 60 – Issue of biodiversity certificate—matters to be set out in certificate

337. Section 70 of the NR Act sets out requirements in relation to the issue of a biodiversity certificate in respect of a registered biodiversity project. Subsection 70(3) of the NR Act provides that a biodiversity certificate must set out any matters that are specified in the rules.
338. Section 60 of the NR Rules is made for the purposes of subsection 70(3) of the NR Act and prescribes the matters that must be set out in a biodiversity certificate.
339. Subsection 60(2) provides that a biodiversity certificate must set out the following matters:
- the unique identifier assigned for the certificate;
 - the date the certificate is issued;

- the unique identifier assigned for the project;
- the project proponent of the project;
- the methodology determination that covers the project;
- the name of the project;
- the biodiversity outcome for the project;
- the permanence period of the project.

340. This information is considered to provide an appropriate snapshot of the project that can be used by participants trading certificates in the Nature Repair Market.

Part 9 – Reporting and Notification Requirements

341. Part 9 of the NR Act sets out provisions relating to reporting and notification requirements.

342. Part 9 of the NR Rules (sections 61 to 73) is made for the purposes of Part 9 of the NR Act and sets out reporting requirements for category A and B biodiversity project reports. Part 9 of the NR Rules also requires a project proponent to notify the Regulator of certain matters and prescribes what is, and is not, taken to be a significant reversal of a biodiversity outcome for a registered biodiversity project.

Division 1 – Reporting requirements

Subdivision A – Category A biodiversity project reports

Section 61 – Operation of this Subdivision

343. Section 61 of the NR Rules clarifies that Subdivision A of Division 1 of Part 9 of the NR Rules (sections 61 to 65) is made for the purposes of Subdivision A of Division 2 of Part 9 of the NR Act and sets out requirements for giving category A biodiversity reports for registered biodiversity projects to the Regulator.

Section 62 – Category A biodiversity project reports – manner and form of giving reports to Regulator

344. Section 103 of the NR Act sets out the requirements for category A biodiversity project reports.

345. Paragraph 103(1)(a) of the NR Act provides that the rules may specify the manner and form of giving reports to the Regulator.

346. Section 62 of the NR Rules is made for the purposes of paragraph 103(1)(a) of the NR Act and requires a category A biodiversity project report to be given to the Regulator by electronic notice transmitted to the Regulator (paragraph 62(a)).

347. The term *electronic notice transmitted to the Regulator* is defined in section 9 of the NR Act. An electronic notice transmitted to the Regulator must comply with the requirements in section 9 of the NR Act and in section 9 of the NR Rules.
348. Section 62 also clarifies that any information or documents included in or with the report may be given in the form of data or digital information (including a map) and by way of an electronic link if the information or documents can be accessed on an external platform (paragraph 62(b)).

Section 63 – Category A biodiversity project reports – information and documents

349. Section 103 of the NR Act sets out the requirements for category A biodiversity project reports.
350. Paragraph 103(1)(b) of the NR Act provides that the rules may set out information that must be included in a category A biodiversity project report. Paragraph 103(1)(f) provides that the rules may set out documents that must accompany the report.
351. Section 63 of the NR Rules is made for the purposes of paragraphs 103(1)(b) and (f) of the NR Act and requires the following information and documents to be set out in or accompany a category A biodiversity project report:
- the unique identifier assigned for the project;
 - the name of the project proponent of the project or, if there are multiple project proponents, the nominee of the project proponents;
 - the reporting period;
 - the activity period (if any) and the permanence period of the project;
 - the activities that have been undertaken during the reporting period in the project area for the project;
 - if there is a project plan for the project—the details of the matters mentioned in subsection 63(3) of the NR Rules;
 - if there is no project plan for the project—the details of the matters mentioned in subsection 63(4) of the NR Rules;
 - if an audit report for the project has been given to the Regulator during the reporting period:
 - the date of the audit report; and
 - the type of audit report; and

- the outcome of the audit report;
- if a previous audit relating to the project, undertaken during the reporting period, identified a matter to be rectified—an explanation of how that matter has been, is being, or is to be rectified;
- if, during the reporting period, there has been a change in relation to the activities being, or that are to be, carried out for the purposes of the project (whether the change is in relation to the activities being carried out or how the activities are being carried out), and the change is not of a minor nature—a description of the change and an explanation of how, following the change, the project:
 - meets the criteria for the approval of the registration of the project under paragraphs 15(4)(a), (b), (c), (e) and (n) of the NR Act; and
 - is being carried out in accordance with the methodology determination (the applicable methodology determination) that covers the project; and
 - if there is a project plan (if any) for the project—the project plan (including by varying the project plan, if necessary);
- if, during the reporting period, the project’s registration has been varied under subsection 20(1) of the NR Rules (which provides for the voluntary variation of the project area, the methodology determination that covers the project, the activity period, or the permanence period)—an explanation of how, following the variation, the project:
 - meets the criteria for approval of registration of the project under paragraphs 15(4)(a), (b), (c), (e) and (n) of the NR Act; and
 - is being carried out in accordance with the applicable methodology determination the project plan (if any) for the project (including by varying the project plan, if necessary)
 - the applicable methodology determination; and
- a statutory declaration by the project proponent to the effect that the information set out in, and any documents accompanying, the report:
 - meet the requirements in the NR Act, this instrument and the applicable methodology determination that apply to the information and documents; and
 - are accurate.

352. If there is a project plan for the registered biodiversity project, then subsection 63(3) requires the following additional matters to be included in the category A biodiversity project report:

- the extent to which, during the reporting period, the project:
 - has met the criteria for the approval of the registration of the project under paragraphs 15(4)(a), (b), (c), (e) and (n) of the NR Act; and
 - has been carried out in accordance with the project plan; and
- if, during the reporting period, the project has not been carried out in accordance with the project plan, or is unlikely to be so carried out after the reporting period:
 - what has not been done in accordance with the project plan; and
 - the reasons for not carrying out the project in accordance with the project plan; and
 - how the project proponent intends to ensure that the project is carried out in accordance with the project plan (including by varying the project plan, if necessary);
- if, during the reporting period, the project plan has been varied—the details of, and the reasons for, the variation;
- if the project proponent considers that the project plan needs to be varied—the details of, and the reasons for, the proposed variation.

353. If there is no project plan for the registered biodiversity project, subsection 63(4) requires the following additional matters to be included in the category A biodiversity project report:

- the extent to which, during the reporting period, the project:
 - has met the criteria for the approval of the registration of the project under paragraphs 15(4)(a), (b), (c), (e) and (n) of the NR Act; and
 - has been carried out in accordance with the information provided in the application to register the project; and
- if, during the reporting period, the project has not been carried out in accordance with the information provided in the application to register the project, or is unlikely to be so carried out after the reporting period:
 - what has not been done in accordance with that information; and
 - the reasons for not carrying out the project in accordance with that information.

Section 64 – Category A biodiversity project reports that are subject to audit

354. Section 103 of the NR Act sets out the requirements for category A biodiversity project reports. Paragraph 103(1)(d) of the NR Act provides that the rules may require that a category A biodiversity project report is subject to audit under the NR Act.
355. Section 64 of the NR Rules is made for the purposes of paragraph 103(1)(d) of the NR Act and requires that a category A biodiversity report that needs to accompany an application for the issue of a biodiversity certificate is subject to audit.
356. Put another way, the effect of section 64 of the NR Rules is to require the first category A biodiversity project report to be subject to audit under the NR Act. This is appropriate, as the first category A biodiversity project report is used by the Regulator to accurately assess the progress of the project in achieving the biodiversity outcome to which the project relates, and whether any other conditions or requirements in the methodology determination have been satisfied. This is relevant to the criteria in section 70 of the NR Act for issuing biodiversity certificates for the project.
357. The NR Rules do not require that any subsequent category A biodiversity project report be subject to audit under the NR Act; however the effect of paragraph 103(1)(e) of the NR Act is that the Regulator may still, be written notice, require one or more subsequent category A biodiversity project reports for a registered biodiversity project to be subject to audit. Subsequent category A biodiversity project reports are ongoing reporting requirements in respect of registered biodiversity projects for which a biodiversity certificate has been issued (whether or not the certificate is still in effect).

Section 65 – Category A biodiversity project reports – audit reports

358. Section 103 of the NR Act sets out the requirements for category A biodiversity project reports. Subparagraphs 103(1)(d)(i) and (e)(i) of the NR Act provides that the rules may prescribe requirements for an audit report of a category A biodiversity project report.
359. Section 65 of the NR Rules is made for the purposes of subparagraphs 103(1)(d)(i) and (e)(i) of the NR Act and requires an audit report of a category A biodiversity project report to:
- be an assurance engagement report; and
 - cover the reporting period for the audited report; and
 - address whether, at the time of the audit, the project:
 - meets the criteria for the approval of the registration of the project under paragraphs 15(4)(a), (b), (c), (e) and (n) of the NR Act; and
 - is being carried out in accordance with the methodology determination (the applicable methodology determination) that covers the project and the project plan (if any) for the project;

- address whether the audited report has met all relevant requirements under the NR Act, this instrument and the applicable methodology determination;
- if another audit has, during the reporting period, been carried out in respect of the project—address whether, and how, any issues raised in that audit have been addressed;
- if any information required to be in the audited report in respect of a period was instead provided in a category B biodiversity project report for the period—address whether the category B biodiversity project report:
 - was given to the Regulator; and
 - met the requirements of section 104 of the NR Act in respect of the information and the period;
- address whether the project is sufficiently progressed to have resulted in, or be likely to result in, the biodiversity outcome for the project;
- address any other matter that the Regulator and the project proponent have agreed should be included in the report; and
- include the outcome of the audit.

360. The term *assurance engagement report* is defined in section 5 of the NR Rules to have the same meaning as in the *National Greenhouse and Energy (Audit) Determination 2009* (NGER Audit Determination). The NGER Audit Determination, in turn, defines assurance engagement report to mean an audit report of a kind mentioned in subsection 75(1) of the NGER Act. Subsection 75(1) of the NGER Act allows the Minister to determine, by legislative instrument, requirements to be met by registered greenhouse and energy auditors in, relevantly, preparing audit reports. The Audit Determination is made for the purposes of subsection 75(1) of the NGER Act and sets out requirements in relation to an assurance engagement report.

361. Where a category A biodiversity project report is subject to audit (either under section 64 or because of a written notice given by the Regulator), the audit report for the audit must meet the requirements of this section.

Subdivision B – Category B biodiversity project reports

Section 66 – Operation of this Subdivision

362. Section 66 of the NR Rules clarifies that Subdivision B of Division 1 of Part 9 of the NR Rules (sections 66 to 70) is made for the purposes of Subdivision B of Division 2 of Part 9 of the NR Act and sets out requirements for giving category B biodiversity reports for registered biodiversity projects to the Regulator.

Section 67 – Category B biodiversity project reports – reporting periods

363. Section 104 of the NR Act sets out requirements for a category B biodiversity project report. Category B biodiversity project reports are relevant to the period before a biodiversity certificate has been issued for a registered biodiversity project. The purpose of requiring reports during this period is to allow the Regulator to monitor the ongoing progress of the project, including compliance with the requirements in the methodology determination that covers the project and (where relevant) the implementation of the project plan for the project.
364. Subsection 104(2) allows the rules to specify the reporting period for category B biodiversity project reports.
365. Section 67 of the NR Rules is made for the purposes of subsection 104(2) of the NR Act and sets out reporting periods for the first and subsequent category B biodiversity project reports.
366. Subsection 67(2) has the effect that the reporting period for the first category B biodiversity project report:
- begins when the biodiversity project is registered under the NR Act; and
 - is not shorter than 6 months; and
 - is not longer than 5 years.
367. In other words, the first category B biodiversity report must be given to the Regulator between 6 months and 5 years after the project is registered.
368. Subsection 67(3) has the effect that the reporting period for subsequent category B project reports:
- begins immediately after the previous category B biodiversity report is given, and
 - is not shorter than 6 months; and
 - is no longer than 5 years.
369. In other words, subsequent category B biodiversity reports must be given to the Regulator between 6 months and 5 years after the previous category B biodiversity project report is given.
370. These reporting periods are considered to provide sufficient timeframes for the Regulator to properly monitor the progress of a registered biodiversity project towards the biodiversity outcome for the project.

Section 68 – Category B biodiversity project reports – manner and form of giving reports to Regulator

371. Section 104 of the NR Act sets out requirements for a category B biodiversity project report. Paragraph 104(3)(a) of the NR Act allows the rules to specify the manner and form for category B biodiversity project reports.
372. Section 68 of the NR Rules is made for the purposes of paragraph 104(3)(a) of the NR Act and requires the category B biodiversity project report to be given to the Regulator by electronic notice transmitted to the Regulator (paragraph 68(a)).
373. The term *electronic notice transmitted to the Regulator* is defined in section 9 of the NR Act. An electronic notice transmitted to the Regulator must comply with the requirements in section 9 of the NR Act and in section 9 of the NR Rules.
374. Section 68 also clarifies that information and documents that are included in the report may be given in the form of data or digital information (including a map) and may be provided by electronic link if the information or documents can be accessed on an external platform (paragraph 68(b)).

Section 69 – Category B biodiversity project reports – information and documents

375. Section 104 of the NR Act sets out the requirements for category B biodiversity project reports. Paragraph 104(3)(b) of the NR Act provides that the rules may set out information that must be included in a category B biodiversity project report. Paragraph 104(3)(f) provides that the rules may set out documents that must accompany the report.
376. Section 69 of the NR Rules is made for the purposes of paragraphs 104(3)(b) and (f) of the NR Act and has the effect that the information and documents to be included in, or accompany, a category B biodiversity project report are the information and documents specified at paragraphs 63(2)(a) to (g) and (l) (relating to information and documents required to be included in, or accompany, a category A biodiversity project report).
377. The information and documents are:
- the unique identifier assigned for the project;
 - the name of the project proponent of the project or, if there are multiple project proponents, the nominee of the project proponents;
 - the reporting period;
 - the activity period (if any) and the permanence period of the project;
 - the activities that have been undertaken during the reporting period in the project area for the project;
 - if there is a project plan for the project—the details of the matters mentioned in subsection 63(3);

- if there is no project plan for the project—the details of the matters mentioned in subsection 63(4);
- a statutory declaration by the project proponent to the effect that the information set out in, and any documents accompanying, the report:
 - meet the requirements in the NR Act, this instrument and the applicable methodology determination that apply to the information and documents; and
 - are accurate.

Section 70 – Category B biodiversity project reports – audit reports

378. Section 104 of the NR Act sets out the requirements for category B biodiversity project reports.
379. Paragraph 104(3)(d) of the NR Act allows the rules to prescribe that a category B biodiversity project report is subject to audit under the NR Act. The NR Rules do not prescribe that any category B biodiversity project report is subject to audit under the NR Act.
380. Paragraph 104(3)(e) of the NR Act allows the Regulator, by written notice, to require a category B biodiversity project report be subject to audit under the NR Act (on a case by case basis). Subparagraph 104(3)(e)(i) of the NR Act provides for the rules to prescribe requirements for an audit report of a category B biodiversity project report that is subject to audit because of a written notice given by the Regulator under paragraph 104(3)(e) of the NR Act.
381. Section 70 of the NR Rules is made for the purposes of subparagraph 104(3)(e)(i) of the NR Act and requires the audit report of a category B biodiversity project report to:
- be an assurance engagement report; and
 - cover the reporting period for the audited report; and
 - address whether, at the time of the audit, the project:
 - meets the criteria for the approval of the registration of the project under paragraphs 15(4)(a), (b), (c), (e) and (n) of the NR Act; and
 - meets all relevant requirements under the NR Act and this instrument; and
 - is being carried out in accordance with the methodology determination that covers the project (the applicable methodology determination) and the project plan (if any) for the project; and
 - address whether the audited report has met all relevant requirements under the NR Act, this instrument and the applicable methodology determination; and

- if another audit has been carried out in respect of the registered biodiversity project—address whether, and how, any issues raised in that audit have been addressed; and
- address any other matter that the Regulator and the project proponent have agreed should be included in the report; and
- include the outcome of the audit.

Division 2 – Notification requirements

Section 71 – Operation of this Division

382. Section 71 of the NR Rules clarifies that Division 2 of Part 9 of the NR Rules (section 71 to 73) is made for the purposes of Division 3 of Part 9 of the NR Act and makes provision for or in relation to requirements to notify the Regulator of certain matters relating to the project proponent, and the registered biodiversity project.

Section 72 – Notification requirements – significant reversal in biodiversity outcome

383. Section 109 of the NR Act requires the project proponent for a registered biodiversity project to notify the Regulator, within 60 days and in writing, if they become aware of a significant reversal of the biodiversity outcome for the project.

384. Section 110 of the NR Act requires the project proponent for a registered biodiversity project to notify the Regulator, within 60 days and in writing, if they become aware of any of the following:

- a natural disturbance that causes a significant reversal of the biodiversity outcome to which the project relates;
- a natural disturbance that is likely to cause a significant reversal of the biodiversity outcome to which the project relates;
- conduct engaged in by the project proponent for the project, or any other person, that causes a significant reversal of the biodiversity outcome to which the project relates;
- conduct engaged in by the project proponent for the project, or any other person, that is likely to cause a significant reversal of the biodiversity outcome to which the project relates.

385. Subsection 111(1) of the NR Act allows the rules to prescribe circumstances, for the purposes of sections 109 and 110 of the NR Act, in which there is taken to have been a reversal of a biodiversity outcome to which a registered biodiversity project relates, and whether the reversal is taken to be significant or not.

386. Section 72 of the NR Rules is made for the purposes of subsection 111(1) of the NR Act and prescribes the circumstances in which, for the purposes of paragraphs 109(1)(b) and 110(1)(b) of the NR Act:

- there is taken to have been a reversal of a biodiversity outcome for a registered biodiversity project; and
- when the reversal is taken to be significant; or
- when the reversal is not taken to be significant.

387. The note to subsection 72(1) explains that a failure to notify the Regulator of a significant reversal of the biodiversity outcome for a registered biodiversity project may result in the project proponent contravening the civil penalty provisions at subsections 109(2) and 110(2) of the NR Act.

388. The maximum civil penalty of 200 penalty units for an individual would apply under subsections 109(2) and 110(2) of the NR Act. A body corporate would be liable for five times the amount as a maximum penalty (see subsection 82(5) of the Regulatory Powers Act). There would also be a continuing civil penalty provision for the purposes of section 93 of the Regulatory Powers Act (see subsections 109(3) and 110(3) of the NR Act).

389. Subsection 72(2) of the NR Rules has the effect that:

- a circumstance where there is taken to have been a reversal of a biodiversity outcome to which a registered biodiversity outcome relates is where a reversal of a biodiversity outcome to which a registered biodiversity outcome relates has occurred on, or in a particular part of, the project area for the project; and
- where the affected part of the project area is at least 10% of the project area for the project – the reversal is taken to be significant; and
- where the affected part of the project area is less than 10% of the project area for the project – the reversal is not taken to be significant.

390. Subsection 72(3) of the NR Rules has the effect that:

- a circumstance where there is taken to have been a reversal of a biodiversity outcome to which a registered biodiversity outcome relates is where a reversal of a biodiversity outcome to which a registered biodiversity outcome relates has been caused by an event or conduct; and
- where the effect of the reversal on the project area for the project is or is likely to be of material consequence to the biodiversity outcome – the reversal is taken to be significant; and

- where the effect of the reversal on the project area for the project is minor and is likely to be resolved within a short period of time without the need for any action or intervention by the project proponent – the reversal is not taken to be significant.

391. In considering the effect of the reversal of biodiversity outcome caused by an event or conduct (under subsection 72(3)), subsection 72(4) requires that the intensity, duration, magnitude and geographic extent of the event or conduct is taken into account.

Section 73 – Notification requirements – specified matters

392. Section 114 of the NR Act allows the rules to specify additional matters that the project proponent of a registered biodiversity project must notify the Regulator of within a specified timeframe.

393. Subsection 73(1) of the NR Rules is made for the purposes of subsection 114(1) of the NR Act and specifies additional matters of which the project proponent must notify the Regulator and the period in which such notifications must be made.

394. The note to subsection 73(1) explains that a failure to notify the Regulator of a matter specified in section 73 of the NR Rules may result in the project proponent contravening the civil penalty provision at subsections 114(3) of the NR Act.

395. The maximum civil penalty of 60 penalty units for an individual would apply under subsections 114(3) of the NR Act. A body corporate would be liable for five times the amount as a maximum penalty (see subsection 82(5) of the Regulatory Powers Act). There would also be a continuing civil penalty provision for the purposes of section 93 of the Regulatory Powers Act (see subsections 114(4) of the NR Act).

396. Subsection 73(2) has the effect that the following matters must be notified to the Regulator:

- where any of the following has changed:
 - the proponent's name;
 - the proponent's contact details;
 - any other matter in respect of which information was required, under subsection 11(3) of the NR Rules, to be provided to the Regulator in an application under subsection 11(1) of the NR Act for the approval of the registration of a biodiversity project;
- where the proponent becomes aware that there is an error in a biodiversity project report about the project, and the error is relevant to the requirements specified in section 35 of the NR Rules (unilateral cancellation of the registration of a biodiversity project if eligibility requirements are not met);

- where the proponent becomes aware that there is an error in a biodiversity project report about the project, and the error is relevant to the criteria mentioned in subsection 70(2) of the NR Act (criteria for issuing a biodiversity certificate in respect of the project);
- where there is a change in how the project is being carried out that:
 - is not of a minor nature; and
 - relates to activities that are being, or are to be, carried out for the purposes of the project; and
 - is relevant to requirements specified in section 35 of the NR Rules (unilateral cancellation of the registration of a biodiversity project is eligibility requirements are not met); and
 - has not previously been the subject of information provided to the Regulator in relation to the project (for instance, in a separate or earlier notification, or via other mechanisms such as a biodiversity project report);
- where the proponent becomes aware that:
 - information to which paragraph 31(2)(b) of the NR Act applies has been given by a person to the Regulator in connection with the project; and
 - that information is false or misleading in a material particular.

397. Subsection 73(3) requires that the required notification to the Regulator of any of matters specified in section 73:

- be in writing; and
- be made within 60 days after the matter occurs. The exception is a notification of a change in the proponent's name or the proponent's contact details, which must be provided within 30 days after the matter occurs.

Part 12 – Deposit of biodiversity certificates with the Regulator

398. Part 12 of the NR Act provides for the holder of a biodiversity certificate to apply to deposit the certificate with the Regulator. This provides a mechanism that a person can use to say to the market that they have committed to not on-selling the certificate – that they are committed to the project for the life of the project.

399. Part 12 of the NR Rules is made for the purposes of Part 12 of the NR Act. Part 12 of the NR Rules (sections 74 and 75) specifies the documents that must accompany an application for the Regulator to approve the deposit of a biodiversity certificate with the Regulator.

Section 74 – Operation of this Part

400. Section 74 of the NR Rules clarifies that Part 12 of the NR Rules (sections 74 and 75) is made for the purposes of Part 12 of the NR Act and makes provision for or in relation to the deposit of biodiversity certificates with the Regulator.

Section 75 – Application to approve deposit of biodiversity certificate with Regulator—documents

401. Section 140 of the NR Act allows the holder of a biodiversity certificate to apply to the Regulator for approval to deposit the certificate with the Regulator.
402. A biodiversity certificate deposited with the Regulator remains the legal property of the holder of the certificate (ie the person depositing it) and that person retains all liabilities associated with the certificate. In addition, the project proponent for the registered biodiversity project (who may or may not be the same person as the owner of the biodiversity certificate) remains responsible for the registered biodiversity project for the purposes of the NR Act (including reporting requirements, project monitoring requirements, and compliance with the methodology determination that covers the project).
403. The holder of the certificate would no longer be able to transfer the certificate to another person or otherwise deal with the certificate (see section 142 of the NR Act). Instead, the certificate would essentially be held in an account in the name of the Commonwealth until the end of the permanence period for the registered biodiversity project to which the certificate relates (or until the certificate is relinquished or cancelled under the NR Act). The Regulator does not gain any rights to the certificate for the period it is deposited with the Regulator.
404. The purpose of allowing biodiversity certificates to be deposited with the Regulator is to provide a mechanism that a person can use to say to the market that they have committed to not on-selling the certificate – that they are committed to the project for the life of the project.
405. Paragraph 140(3)(a) of the NR Act requires that an application for approval to deposit a biodiversity certificate with the Register must be accompanied by such documents (if any) as are specified in the rules.
406. Section 75 of the NR Rules is made for the purposes of paragraph 140(3)(a) of the NR Act and specifies the document that must accompany an application for the Regulator to approve the deposit of a biodiversity certificate with the Regulator. An application must be accompanied by a signed declaration by the holder of the certificate to the effect that the holder acknowledges and accepts:
- the effect of subsection 142(1) of the NR Act in respect of the certificate if the Regulator approves the deposit of the certificate with the Regulator; and
 - that the holder will need to continue to comply with requirements under the NR Act that apply in relation to the certificate.

407. Paragraphs 142(1)(a) to (e) of the NR Act sets out the following legal consequences of depositing a biodiversity certificate with the Regulator:

- the Regulator must transfer the certificate (in accordance with the rules made for the purposes of section 167 of the NR Act) from the Register account in which there is an entry for the certificate to a Commonwealth Register account; and
- the certificate must not be transferred from the Commonwealth Register account to another Register account; and
- while an entry for the certificate is in the Commonwealth Register account, the certificate is taken, for the purposes of the NR Act, to be deposited with the Regulator; and
- subject to section 152 of the NR Act (dealing with relinquishment of a biodiversity certificate), while an entry for a certificate is in the Commonwealth Register account:
 - the certificate remains in force; and
 - the person who applied for the approval must be recorded in the Register as the holder of the certificate; and
 - the certificate cannot be transmitted or otherwise dealt with; and
- the Regulator must remove the entry for the certificate from the Commonwealth Register account at whichever is the earliest of the following times:
 - when the Regulator is required to remove the entry by section 77 of the NR Act (when the certificate is cancelled); or
 - when the Regulator is required to remove the entry by section 152 of the NR Act (when the certificate is relinquished).

408. Given that:

- the holder of a biodiversity certificate is the legal owner of the certificate, which is personal property; and
- the above-mentioned consequences of depositing a certificate with the regulator would permanently restrict the holder's rights in relation to what they can do with their certificate,

it is important that persons applying to the Regulator to approve the deposit of a biodiversity certificate with the Regulator properly understand the consequences of doing so. Requiring them to provide a signed declaration to this effect is therefore appropriate in the circumstances.

Part 15 – Register

Division 1 – Entries in the Register

Subdivision A – Information about biodiversity projects

Section 76 – Operation of this Subdivision

409. Section 76 of the NR Rules clarifies that Subdivision A of Division 1 of Part 15 of the NR Rules (sections 76 to 81) is made for the purposes of section 162 of the NR Act.

Section 77 – Describing project areas for registered biodiversity projects

410. Section 161 of the NR Act requires the Regulator to keep a register, called the Biodiversity Markets Register, on the Regulator’s website. Subsection 162(1) of the NR Act requires the Register to set out certain information relating to registered biodiversity projects.

411. Registered biodiversity projects are to be carried out in a project area. A project area may be on Australian land, in Australian waters, or a combination of both. Paragraph 162(1)(b) of the NR Act requires that the Register must set out, for each registered biodiversity project, a description, in accordance with the rules, of the project area for the project.

412. Section 77 of the NR Rules is made for the purposes of paragraph 162(1)(b) of the NR Act. This is confirmed by subsection 77(1).

413. Subsections 77(2) and (3) sets out the requirements for describing, on the Register, the project area for a registered biodiversity project. For each such project, the Register is required to set out:

- the State or Territory in which any part of the project area is located (if applicable);
- if any part of the project area is Torrens system land or Crown land:
 - the street address, lot number and any land title details;
 - if applicable, the local government area;
- if applicable, the boundary of Australian waters (other than inland waters) and how that boundary is defined;
- a map of the project area, or a link to the map.

414. The term *Australian waters* is defined in section 7 of the NR Act to mean any of: the territorial sea of Australia; the waters of the sea on the landward side of the territorial sea of Australia; the territorial sea of each external territory; the waters of the sea on the landward side of the territorial sea of each external Territory; and inland waters. The term *inland waters* is defined in section 7 of the NR Act to mean waters within Australia other than waters of the sea.

415. The publication of information about registered biodiversity projects on the Register is necessary to ensure that relevant information is accessible and available to participants under the scheme. This ensures that participants are able to obtain accurate and up-to-date information about the details and status of registered biodiversity projects and can have confidence in conducting their business affairs, which supports the emerging market.
416. It is not expected that the information published under section 77 would include personal information within the meaning of the Privacy Act. Should that be the case, however, the requirements in section 77 of the NR Rules are intended to constitute an authorisation for the purposes of Australian Privacy Principle 6.2 (see Schedule 1 to the Privacy Act) and other relevant laws including common law and equitable protections for confidentiality (because the relevant clause will authorise the use or disclosure of the information by or under an Australian law).
417. Subsection 162(2) of the NR Act clarifies that the requirements in subsection 162(1) are subject to section 163 of the NR Act. Section 163 of the NR Act relevantly provides that the project proponent for a registered biodiversity project may request that a description of the project area, or part of the project area, is not included on the Register in certain circumstances. This process is intended to ensure that publishing information about the project area for a registered biodiversity project on the Register does not result in unacceptable adverse impacts on persons, biodiversity or Indigenous cultural heritage, while maintaining transparency for the market where possible.

Section 78 – Information about registered projects under related schemes

418. Section 161 of the NR Act requires the Regulator to keep a register, called the Biodiversity Markets Register, on the Regulator's website. Subsection 162(1) of the NR Act requires the Register to set out certain information relating to registered biodiversity projects.
419. A project area on which a registered biodiversity project is being carried out may also be a registered project under a related scheme. A *registered project under a related scheme* is defined in section 7 of the NR Act to mean an eligible offsets project under the *Carbon Credits (Carbon Farming Initiative) Act 2011* (CFI Act) or a project under another similar (however described) scheme under a prescribed Commonwealth, State or Territory law.
420. Paragraph 162(1)(i) of the NR Act requires the Register to include information that the project proponent has requested to be included about the extent to which the project area, or any part of the project area, is also an area of a registered project under a related scheme. This information must only be included in the Register if, in accordance with subparagraph 162(1)(i)(iii) of the NR Act, the Regulator is satisfied that the information meets the requirements specified in the rules.
421. If a request under paragraph 162(1)(i) of the NR Act is made, the request must be in writing in the approved form (paragraph 162(3)(a)) and must be accompanied by such documents (if any) as are prescribed by the rules (paragraph 162(3)(b)).

422. Subsection 78(1) of the NR Rules is made for the purposes of subparagraph 162(1)(i)(iii) and paragraph 162(3)(b) of the NR Act. This is confirmed in subsection 78(1).
423. Subsection 78(2) provides that, for the purposes of subparagraph 161(i)(iii) of the NR Act, the information about the extent to which a project area, or any part of a project area, is also an area on or in which a registered project under a related scheme is also being carried out, or is to be carried out, must meet the following requirements:
- the information must identify the registered project under the related scheme;
 - if the registered project is an eligible offsets project under the CFI Act – the information must include the unique project identifier for the project under the CFI Act;
 - the information must state the extent to which the project area overlaps the related scheme area and whether that overlap is material;
 - the information must state the overlap (if any) of the duration of the registration of the projects.
424. Subsection 78(3) provides that, for the purposes of paragraph 162(3)(b) of the NR Act, the application requesting the information be included in the Register must be accompanied by a map or geospatial data that shows the overlap in project areas.
425. Subsection 162(4) of the NR Act provides that if the Register includes information that was requested to be included under paragraph 162(1)(i) of the NR Act, and the Regulator becomes aware that the information is no longer correct, then the Regulator may remove the information from the Register.
426. The publication of information about registered biodiversity projects on the Register, and the ability for the Regulator to remove incorrect information under subsection 162(4) of the NR Act, ensures that participants are able to obtain accurate and up-to-date information about the details and status of registered biodiversity projects and how they interrelate with other related schemes. This may affect the value of the biodiversity certificate related to the project. Publication of this information increases confidence in conducting business, which supports the emerging market.
427. It is not expected that the information published would include personal information within the meaning of the Privacy Act. Should that be the case, however, the requirements in section 78 of the NR Rules are intended to constitute an authorisation for the purposes of Australian Privacy Principle 6.2 (see Schedule 1 to the Privacy Act) and other relevant laws including common law and equitable protections for confidentiality (because the relevant clause will authorise the use or disclosure of the information by or under an Australian law).

Section 79 – Information about project plans for registered biodiversity projects

428. Section 161 of the NR Act requires the Regulator to keep a register, called the Biodiversity Markets Register, on the Regulator’s website. Subsection 162(1) of the NR Act requires the Register to set out certain information relating to registered biodiversity projects.
429. A registered biodiversity project may need to be accompanied by a project plan, if required by the methodology determination that covers the project (see paragraph 15(4)(f) and subsection 45(7) of the NR Act). Where a project plan is required, paragraph 162(1)(j) of the NR Act requires the Register to set out such information (if any) about the project plan, as is prescribed by the rules.
430. Section 79 of the NR Rules is made for the purposes of paragraph 162(1)(j) of the NR Act. This is confirmed by subsection 79(1).
431. Subsection 79(2) has the effect that where a registered biodiversity project is required to have a project plan, the Register must set out the following information about that project plan:
- a statement that the methodology determination that covers the project requires that there is a project plan for the project;
 - a copy of the project plan, or an electronic link to the project plan;
 - if the project plan is varied under the NR Act, a copy of the varied plan or an electronic link to the varied plan.
432. The publication of information on the Register about a project plan for a registered biodiversity projects ensures that participants are able to obtain accurate and up-to-date information about the details and status of registered biodiversity projects and can have confidence in conducting their business affairs, which supports the emerging market.
433. It is not expected that the information published would include personal information within the meaning of the Privacy Act. Should that be the case, however, the requirements in section 79 of the NR Rules are intended to constitute an authorisation for the purposes of Australian Privacy Principle 6.2 (see Schedule 1 to the Privacy Act) and other relevant laws including common law and equitable protections for confidentiality (because the relevant clause will authorise the use or disclosure of the information by or under an Australian law).

Section 80 – Other information about registered biodiversity projects

434. Section 161 of the NR Act requires the Regulator to keep a register, called the Biodiversity Markets Register, on the Regulator’s website. Subsection 162(1) of the NR Act requires the Register to set out certain information relating to registered biodiversity projects. Paragraph 162(1)(m) of the NR Act provides that the Register must set out any other such information (if any) as is prescribed by the rules.
435. Section 80 of the NR Rules is made for the purposes of paragraph 162(1)(m) of the NR Act. This is confirmed by subsection 80(1).

436. Subsection 80(2) provides that the Register must, for each registered biodiversity project, include the following information:

- the unique identifier assigned for the project;
- the activity period (if any) and the permanence period of the project;
- the day on which the approval of the registration of the project takes effect;
- if the registration of the project is varied—the day on which the registration is varied and a description of the variation;
- the activities that are being carried out for the purposes of the project;
- if the methodology determination (the applicable methodology determination) that covers the project is varied:
 - a statement to that effect; and
 - whether the variation of the determination applies, or does not apply, to the project;
- if the applicable methodology determination ceases to be in force:
 - a statement to that effect; and
 - whether, despite the cessation, the determination continues to cover the project and, if so, the day (if any) on which the determination ceases to cover the project; and
- whether the project area overlaps with the project area of another registered biodiversity project and, if so, the unique identifier assigned for that other project;
- whether:
 - the project area is or includes a native title area; or
 - a registered indigenous land use agreement is relevant to the project;
- if the project area (or part) for the project is, or overlaps with, an area classified by the IBRA (the Interim Biogeographic Regionalisation for Australia) as a bioregion—the name of the bioregion;
- for any part of the project area located on land—the size of that area, in hectares;

- for any part of the project area located in waters—the size of that area, in square metres or kilometres;
- if information about the project, or the project area (or part) for the project, is not set out in the Register because of a decision under section 163 or 163A of the NR Act—a statement to the effect that such a decision has been made and the date of the decision;
- if a relinquishment notice is given in relation to a biodiversity certificate issued in relation to the project:
 - the date the notice is given; and
 - if the decision to give the notice is, upon review under Part 20 of the NR Act, affirmed, varied or revoked—a statement to that effect and the date the review decision is made;
- if the project area (or part) for the project is subject to a biodiversity maintenance declaration:
 - the date the declaration is made; and
 - if the declaration is varied or revoked—a statement to that effect and the date it is varied or revoked;
- if a category A biodiversity project report is given to the Regulator in respect of the project:
 - a copy of the report, or an electronic link to the report; and
 - the reporting period for the report;
- if a category B biodiversity project report is given to the Regulator in respect of the project:
 - a copy of the report, or an electronic link to the report; and
 - the reporting period for the report;
- for each audit report given to the Regulator under the NR Act in relation to the project:
 - the kind of report it is; and
 - the date the report is given to the Regulator; and
 - the outcome of the report;

- if an enforceable undertaking is accepted under section 114 of the Regulatory Powers Act in relation to compliance, in respect of the project, by the project proponent for the project with a provision of the NR Act or the NR Rules:
 - the date the undertaking is accepted; and
 - if the undertaking is withdrawn, varied or cancelled—a statement to that effect and the date it is withdrawn, varied or cancelled.

437. The publication of information about registered biodiversity projects on the Register is necessary to ensure that relevant information is accessible and available to participants under the scheme. This ensures that participants are able to obtain accurate and up-to-date information about the details and status of registered biodiversity projects and can have confidence in conducting their business affairs, which supports the emerging market.

438. It is not expected that the information published would include personal information within the meaning of the Privacy Act. Should that be the case, however, the requirements in section 80 of the NR Rules are intended to constitute an authorisation for the purposes of Australian Privacy Principle 6.2 (see Schedule 1 to the Privacy Act) and other relevant laws including common law and equitable protections for confidentiality (because the relevant clause will authorise the use or disclosure of the information by or under an Australian law).

Section 81 – Information about former registered biodiversity projects

439. Section 161 of the NR Act requires the Regulator to keep a register, called the Biodiversity Markets Register, on the Regulator’s website. Subsection 162(5) of the NR Act provides that the rules may provide for the Register to set out information for biodiversity projects that have been, but have ceased to be, registered biodiversity projects (including such projects that are no longer being carried on).

440. Section 81 of the NR Rules is made for the purposes of subsection 165(2) of the NR Act. This is confirmed by subsection 81(1).

441. Subsection 81(2) provides that the information that must be included in the Register in respect of biodiversity projects that have been, but have ceased to be, registered biodiversity projects, is:

- the information required to be set out in the Register about the project before the project ceased to be a registered biodiversity project. This means that even if a biodiversity project ceases to be registered, the Register will continue to show the information that applied to the project prior to its registration being cancelled. This allows participants to track the history of projects, which is important for market confidence;
- the reason the project ceased to be a registered biodiversity project;
- the date on which the project ceased to be a registered biodiversity project.

442. The publication of information about registered biodiversity projects on the Register is necessary to ensure that relevant information is accessible and available to participants under the scheme. This ensures that participants are able to obtain accurate and up-to-date information about the details and status of registered biodiversity projects and can have confidence in conducting their business affairs, which supports the emerging market.
443. It is not expected that the information published would include personal information within the meaning of the Privacy Act. Should that be the case, however, the requirements in section 81 of the NR Rules are intended to constitute an authorisation for the purposes of Australian Privacy Principle 6.2 (see Schedule 1 to the Privacy Act) and other relevant laws including common law and equitable protections for confidentiality (because the relevant clause will authorise the use or disclosure of the information by or under an Australian law).

Subdivision B – Information about biodiversity certificates

Section 82 – Operation of this Subdivision

444. Section 82 of the NR Rules provides that Subdivision B of Division 1 of Part 15 of the NR Rules (sections 83 and 84) is made for the purposes of section 164 of the NR Act.

Section 83 – Information about biodiversity certificates that are in effect

445. Subsection 164(1) of the NR Act requires the Register to set out certain information for each biodiversity certificate that is in effect. Paragraph 164(1)(e) of the NR Act provides that the Register must set out such other information as is prescribed by the rules.
446. Section 83 of the NR Rules is made for the purposes of paragraph 164(1)(e) of the NR Act. This is confirmed in subsection 83(1).
447. The note following subsection 83(1) directs the reader to paragraphs 164(1)(a) to (d) of the NR Act for other information that must be set out in the Register for each biodiversity certificate that is in effect.
448. Subsection 83(2) provides that the Register must set out, for each biodiversity certificate that is in effect, the following information:
- the unique identifier assigned for the certificate;
 - the account number and holder of the Register account in which the certificate is held;
 - each previous holder (if any) of the certificate;
 - if the certificate is varied—details of the variation;
 - if an instruction is made under paragraph 95(1)(a) to transfer the certificate to another account:
 - the date the instruction was made; and

- a record of the instruction.

449. The publication of information about biodiversity certificates on the Register is necessary to ensure that relevant information is accessible and available to participants under the scheme. This ensures that participants are able to obtain accurate and up-to-date information about the details and status of biodiversity certificates and can have confidence in conducting their business affairs, which supports the emerging market.
450. It is not expected that the information published would include personal information within the meaning of the Privacy Act. Should that be the case, however, the requirements in section 83 of the NR Rules are intended to constitute an authorisation for the purposes of Australian Privacy Principle 6.2 (see Schedule 1 to the Privacy Act) and other relevant laws including common law and equitable protections for confidentiality (because the relevant clause will authorise the use or disclosure of the information by or under an Australian law).

Section 84 – Information about biodiversity certificates that have ceased to be in effect

451. Subsection 164(2) of the NR Act requires the Register to set out certain information for each biodiversity certificate that has ceased to be in effect. Paragraph 164(2)(e) of the NR Act provides that the Register must set out such information as is prescribed by the rules.
452. Section 84 of the NR Rules is made for the purposes of paragraph 164(2)(e) of the NR Act. This is confirmed by subsection 84(1).
453. The note following subsection 84(1) directs the reader to paragraphs 164(2)(a) to (d) of the NR Act for other information that must be set out in the Register for each biodiversity certificate that has ceased to be in effect.
454. Subsection 84(2) provides that the Register must set out, for each biodiversity certificate that has ceased to have effect, the following information:
- the unique identifier assigned for the certificate;
 - if the certificate was varied before it ceased to be in effect—the details of the variation;
 - the reason the certificate ceased to be in effect;
 - the account number and holder of the Register account in which the certificate was held at the time it ceased to be in effect.
455. The publication of information about biodiversity certificates on the Register is necessary to ensure that relevant information is accessible and available to participants under the scheme. This ensures that participants are able to obtain accurate and up-to-date information about the details and status of biodiversity certificates and can have confidence in conducting their business affairs, which supports the emerging market.

456. It is not expected that the information published would include personal information within the meaning of the Privacy Act. Should that be the case, however, the requirements in section 84 of the NR Rules are intended to constitute an authorisation for the purposes of Australian Privacy Principle 6.2 (see Schedule 1 to the Privacy Act) and other relevant laws including common law and equitable protections for confidentiality (because the relevant clause will authorise the use or disclosure of the information by or under an Australian law).

Subdivision C – Information about Register accounts

Section 85 – Operation of this Subdivision

457. Section 85 of the NR Rules provides that Subdivision C of Division 1 of Part 15 of the NR Rules (sections 85 and 86) is made for the purposes of section 167 of the NR Act.

Section 86 – Information about Register accounts that have been closed

458. Section 167 of the NR Act provides that the rules may make provision for and in relation to the Register. Paragraph 167(2)(a) of the NR Act relevantly provides that the rules may make provision for matters that are to be recorded in the Register.

459. Section 86 of the NR Rules is made for the purposes of paragraph 167(2)(a) of the NR Act.

460. Section 86 requires the Register to set out specified information in relation to Register accounts that have been closed under Subdivision E of Division 2 of Part 15 of the NR Rules (dealing with voluntary or unilateral closure of a Register account). A biodiversity certificate that is held in a Register account that is closed is cancelled (see section 98 of the NR Rules).

461. Section 86 requires the Register to set out the following information in relation to a Register account that has been closed:

- the account number and holder of the Register account;
- whether the closure was voluntary or unilateral;
- the date the Register account was closed;
- the details of any biodiversity certificates cancelled because of the closure of the Register account.

462. Publication of this information about Register accounts would enable the Register to retain up-to-date information and provide an accurate historical archive of closed Register accounts.

463. It is not expected that the information published would include personal information within the meaning of the Privacy Act (other than the name of the account holder where that person is an individual rather than a body corporate). Should that be the case, however, the requirements in section 86 of the NR Rules are intended to constitute an authorisation for the purposes of Australian Privacy Principle 6.2 (see Schedule 1 to the Privacy Act) and other relevant laws including common law and equitable protections for confidentiality (because

the relevant clause will authorise the use or disclosure of the information by or under an Australian law).

Division 2 – Register accounts

Subdivision A - Preliminary

Section 87 – Operation of this Division

464. Section 87 of the NR Rules provides that Division 2 of Part 15 of the NR Rules (sections 87 to 107) is made for the purposes of sections 165 and 167 of the NR Act and makes provision:

- for or in relation to empowering the Regulator to open accounts in the Register to hold biodiversity certificates; and
- in relation to the Register.

Section 88 – Register accounts

465. Section 88 of the NR Rules establishes the concept of a Register account. The primary purpose of a person holding a Register account is to hold biodiversity certificates. A biodiversity certificate that has been issued to a person for a registered biodiversity project, or that a person has purchased on the Nature Repair Market, must be kept in a Register account. There is no ability to hold a certificate outside of a Register account.

466. Subsection 88(1) defines the term *Register account* for a person, which means an account in the Register that is kept in the name of the person.

467. Subsection 88(2) defines the term *holder*, which means the person who holds the Register account.

468. Subsection 88(3) defines the term *account number*, which means the unique number that would identify each account in the Register.

469. These terms are used throughout Division 2 of Part 15 of the NR Rules.

470. Subsection 88(4) clarifies that a person may hold multiple Register accounts. This is important, as a person may decide to transfer a biodiversity certificate between their accounts.

Subdivision B – Opening of Register accounts

Section 89 – Request to open Register account

471. Section 89 of the NR Rules provides that a person (known as the applicant) may request the Regulator to open a Register account in their name.

Section 90 – Form of request

472. Section 90 of the NR Rules provides for the form of a request to open a Register account that is made to the Regulator under section 89 of the NR Rules.

473. Subsection 90(1) provides that the request:

- must be in writing; and
- must be in a form approved, in writing, by the Regulator; and
- if the applicant is not an individual (for example, if the applicant is a body corporate) – must nominate one or more individuals as authorised representatives of the applicant. This is necessary, as the Regulator needs to be able to contact and deal with individuals in relation to the Register; and
- if the applicant is an individual—may include a nomination for one or more individuals as authorised representatives of the applicant; and
- must include evidence that each individual nominated as an authorised representative has sufficient authority to act on the applicant’s behalf in respect of the account; and
- must include identity evidence for:
 - the applicant; and
 - each individual nominated as an authorised representative of the applicant; and
 - if identity evidence for an individual is required under paragraph 123(1)(c) (identity evidence relating to a body corporate that does not have an ABN), 124(c) or (d) (identity evidence for trustees who are individuals and trustees that are bodies corporate) of the NR Rules—each such individual; and
- Where the applicant is a proprietary or private company – must include the name and address of each beneficial owner of the applicant, where a beneficial owner is an individual who owns, through one or more shareholdings, over 25% of the issued capital in the company. Subsection 90(2) would, however, clarify that this requirement does not apply if the proprietary company is a publicly listed company in Australia; a wholly owned subsidiary of a publicly listed company in Australia; or if the proprietary company is licensed and subject to the regulatory oversight of a Commonwealth statutory regulator in relation to its activities as a company.

474. Subsection 90(3) of the NR Rules provides that the approved form for the application may require the following information to be provided, if relevant to the applicant, or to an authorised representative, officer, employee or trustee of the applicant:

- a person’s full name, address and contact details;
- a person’s business name and, if different, trading name;

- the address of a person's principal place of business;
- a person's ABN, ACN, ARBN, GST registration number, Indigenous corporation number or other unique number;
- an individual's date of birth and residential address;
- each name by which an individual is known by;
- a person's status as one of the following:
 - an individual, including an individual who is a sole trader;
 - a body corporate;
 - a trust;
 - a corporation sole;
 - a body politic;
 - a local governing body;
 - any other kind of entity;
- if the person's status is a body corporate—the kind of entity the person is;
- a description of the form in which a body corporate has been incorporated;
- a description of the type of trust a trust is;
- the full name and date of birth of the beneficiaries of a trust;
- details about a class of which beneficiaries of a trust are members;
- each jurisdiction in which a person operates;
- the full name, address and contact details of any Australian agent through which a body corporate that is a foreign person conducts business.

475. It is appropriate for the Regulator to be able to collect this information for an applicant for a Register account in order to ensure that the applicant is a fit and proper person (see section 91 of the NR Rules).

476. The first note following subsection 90(3) explains that the Regulator may require further information in connection with the request to open a Register account, and directs the reader to section 128 of the NR Rules.
477. The second note following subsection 90(3) explains that the approved form of application may provide for verification by statutory declaration of statements in the request to open a Register account, and directs the reader to section 129 of the NR Rules.
478. To the extent that any information collected in relation to an application to open a Register account is personal information within the meaning of the Privacy Act, that information must be collected, stored, used and disclosed in accordance with the Australian Privacy Principles. It is not expected that personal information within the meaning of the Privacy Act would be published (other than the name of the holder of the account, where that person is an individual rather than an entity such as a body corporate).
479. The Register is intended to provide an efficient and reliable method for recording registered biodiversity certificates (and appropriate details about such projects) and for tracking biodiversity certificates held and traded by scheme participants. It is intended to be a ‘single source of truth’ for projects covered by the scheme established under the NR Act. Collection of information relating to the identity of individuals who will have access to deal with and make transactions through the Register is necessary, appropriate and proportionate to ensuring the integrity of the Register.

Section 91 – When Regulator must open Register account

480. Section 91 of the NR Rules applies if a person has made a request under section 89 of the NR Rules for the Regulator to open a Register account in the person’s name.
481. Subsection 91(2) provides that the Regulator must open the account if satisfied that the following criteria are met:
- the applicant is a fit and proper person (in accordance with the requirements set out in Part 8 of the NR Act);
 - the identity of each person that is required to be included in the application is verified in accordance with the identification procedures in Division 1 of Part 21 of the NR Rules;
 - if the applicant is not an individual—each authorised representative of the applicant has sufficient authority to act on the applicant’s behalf.
482. This means where the Regulator is satisfied that these criteria are met, the Regulator does not have discretion to refuse to open a Register account for the person. Put another way, the Regulator can only refuse to open a Register account for the person if the Regulator is not satisfied that the above criteria are met. This is appropriate, as the Register is the sole mechanism to buy and trade biodiversity certificates in the Nature Repair Market.

483. Subsection 91(3) requires the Regulator to give written notice of a decision to refuse a request to open a Register account as soon as practicable after making the decision. A decision by the Regulator to refuse to open a Register account is a reviewable decision under paragraph 120(a) of the NR Rules.

Subdivision C – Commonwealth Register accounts

Section 92 – Secretary may direct Regulator to open Commonwealth Register account

484. Section 92 of the NR Rules deals with Register accounts held by the Commonwealth. The NR Act provides for the Commonwealth to be able to participate in the Nature Repair Market. In addition, mechanisms under the NR Act such as relinquishment and depositing certificates with the Regulator will be enabled through Register accounts held by the Commonwealth (see section 93 of the NR Rules).
485. Subsection 92(1) provides that the Secretary may direct the Regulator to open a Register account to be kept in the name of the Commonwealth. The direction must be in writing.
486. Subsection 92(2) requires the direction to specify the name of the account, which must be one of the names specified in section 93 of the NR Rules. Subsection 92(3) requires the Regulator to comply with the direction to open the account.

Section 93 – Names of Commonwealth Register accounts

487. Section 93 of the NR Rules has the effect that a Commonwealth Register account must be named one of the following:
- the Commonwealth holding account;
 - the biodiversity certificate relinquishment account;
 - the Commonwealth deposit of certificates account.
488. It is intended that the *Commonwealth holding account* will be used for the purchasing and selling of biodiversity certificates by the Commonwealth.
489. It is intended that the *biodiversity certificate relinquishment account* will be used to hold biodiversity certificates that have been relinquished under Part 13 of the NR Act.
490. It is intended that the *Commonwealth deposit of certificates account* will be used to hold biodiversity certificates that have been deposited with the Regulator under Part 12 of the NR Act.

Subdivision D – Property in, and transfer of, biodiversity certificates

Section 94 – Transfer of biodiversity certificate between Register accounts

491. Section 94 of the NR Rules provides for the transfer of biodiversity certificates between Register accounts.

492. Subsection 94(1) provides that the Regulator may transfer a biodiversity certificate between Register accounts held by the same person, or Register accounts held by different persons.
493. Paragraph 94(2)(a) provides that the transfer of a biodiversity certificate from a Register account held by one person to a Register account held by a different person will be given effect by the removal of the entry for the certificate from the first person's Register account and the making of an entry for the certificate in the different person's Register account.
494. Paragraph 94(2)(b) provides that the transfer of a biodiversity certificate between Register accounts that are held by the same person will be given effect by the removal of the entry in the Register account held by the person and the making of a new entry for the certificate in the other Register account held by the person.

Section 95 – Instruction to transfer biodiversity certificate

495. Section 95 of the NR Rules deals with requirements for instructions to transfer biodiversity certificates between accounts and when those instructions have force.
496. Subsection 95(1) has the effect that an instruction to transfer a biodiversity certificate to a different account is of no force until the transferor instructs the Regulator by electronic notice transmitted to the Regulator to transfer the certificate from the Register account of the transferor to the Register account of the transferee and the Regulator complies with that instruction.
497. Put another way, the only way the owner of a biodiversity certificate can transfer the certificate from one Register account to another Register account (either to transfer the certificate to the Register account of a person who has purchased the certificate, or to transfer the certificate to another Register account of the same person) is to send an instruction for the transfer to the Regulator by electronic notice transmitted to the Regulator. This is intended to remove the possibility of incorrect or fraudulent transfers, which would damage the Nature Repair Market.
498. The term *electronic notice transmitted to the Regulator* is defined in section 9 of the NR Act. An electronic notice transmitted to the Regulator must comply with the requirements in section 9 of the NR Act and in section 9 of the NR Rules.
499. The note following subsection 95(1) clarifies that the transferor and transferee may be the same person.
500. Subsection 95(2) requires the instruction provided to the Regulator under subsection 95(1) to set out the account number and holder of the Register account of both the transferor and the transferee.
501. Subsection 95(3) requires the Regulator to comply with an instruction received under as soon as practicable after receiving it.

502. Subsection 95(4) provides that the Secretary may give an instruction under subsection 95(1) if the transferor is the Commonwealth.

Subdivision E – Closure of Register accounts

Section 96 – Voluntary closure of Register account

503. Section 96 of the NR Rules deals with the voluntary closure of a Register account.

504. Subsection 96(1) provides that the holder of a Register account may make a request to the Regulator to close the account. The request be made in writing and in a form approved by the Regulator (subsection 96(3)).

505. Subsection 96(2) has the effect that the holder of a Register account can only request that the account be closed if the account does not hold any biodiversity certificates at the time of the request. This is appropriate, as closing a Register account that holds a biodiversity certificate at the time of closure results in the cancellation of the biodiversity certificate (see section 98 of the NR Rules). This means that if the holder of a Register account wants to close that account, the holder will need to first ensure that any biodiversity certificate held in that account are transferred to another Register account (either another account held by the same person, or an account held by another person) before a request under 96 to close the account can be made.

506. Subsection 96(4) requires the Regulator to, as soon as practicable after receiving the request, to close the account and notify the holder that the account has been closed.

Section 97 – Unilateral closure of Register account

507. Section 97 of the NR Rules provides the Regulator with the power to close a Register account on their own initiative in certain circumstances.

508. For the Regulator to unilaterally close a Register account, subsection 97(1) requires that the Regulator be satisfied that the holder of the account:

- is no longer a fit and proper person; or
- has contravened, or is contravening:
 - rules made for the purposes of paragraph 167(2)(i) of the NR Act (which require the holders of Register accounts to notify the Regulator of specified events); or
 - rules made for the purposes of subsection 168(1) or (2) of the NR Act (which deal with the use or disclosure of information obtained from the Register).

509. Subsection 97(2) requires the Regulator to use all reasonable efforts to notify the holder of the Register account, in writing, that the Regulator is intending to close the account.

510. Subsection 97(3) requires that the notice include the reasons why the Regulator intends to close the account and a statement of the effect of the closure of the account on any

biodiversity certificates held in the account immediately before the closure (which is the cancellation of the biodiversity certificates, in accordance with section 98 of the NR Rules). The notice must invite the Register account holder to make submissions to the Regulator within a specified period of not less than 30 days.

511. The Regulator must consider any submissions made in response to the notice before deciding whether to close the account.
512. Subsections 97(2) and (3) ensure that procedural fairness is afforded to the holder of the Register account by providing them with an opportunity to be heard prior to the Regulator's decision. In addition, it provides the holder of the Register account the opportunity to ensure that any biodiversity certificate held in the account are transferred to another account prior to the account being closed. This is important, as the effect of section 98 of the NR Rules is that a biodiversity certificate that is held in a Register account that is cancelled will also be cancelled.
513. Subsection 97(4) requires the Regulator to, as soon as practicable closing a Register account under section 97, give written notice of the decision to the holder (if any) of the Register account.
514. A decision by the Regulator to unilaterally close a Register account is a reviewable decision under paragraph 120(b) of the NR Rules.

Section 98 – Effect of closure of Register account – cancellation of biodiversity certificate

515. Section 98 of the NR Rules has the effect that a biodiversity certificate is cancelled if it is held in a Register account that is unilaterally closed by the Regulator under section 97 of the NR Rules.
516. As noted above, the holder of the Register account that is proposed to be closed under section 97 of the NR Rules will be notified of the proposed closure of the account and will therefore have an opportunity to transfer any certificates held in that account to another Register account prior to its closure. This will allow the holder of such a certificate to avoid the certificate being cancelled when the Register account is closed. This may involve the transfer of a certificate to another account held by that person, or the sale of the certificate to another person who holds a register account.

Subdivision F – Authorised representatives

Section 99 – Nomination of authorised representative

517. Section 99 of the NR Rules provides for the nomination of an authorised representative.
518. Subsection 99(1) provides that the holder of a Register account may nominate, at any time, an individual as an authorised representative of the holder of the account. Where the holder of a Register account has nominated an individual to be an authorised representative, the Regulator may approve that person to access and deal with the account (including the ability to issue instructions to transfer a biodiversity certificate from that account to another account).

519. It is expected that where the holder of a Register account is, for example, a body corporate, the body corporate could nominate particular officers or employees to act as authorised representatives for the account, so that (subject to the Regulator's approval) those officers or employees would be able to manage the account on the body corporate's behalf.
520. The note following subsection 99(1) explains that authorised representatives for a Register account may also have been nominated in the request to open the account. In this respect, section 99 provides a mechanism to nominate additional authorised representatives after the account has been opened.
521. Subsection 99(2) requires the nomination to be in writing and in the approved form, to include evidence that the individual has sufficient authority to act on the account holder's behalf and include identity evidence in accordance with procedures in Division 1 of Part 21 of the NR Rules.
522. Subsection 99(3) clarifies that the approved form may require information in subsection 90(3) to be provided in relevant to the individual.
523. To the extent that any information collected in relation to a request to nominate an authorised representative for the holder of a Register account is personal information within the meaning of the Privacy Act, that information must be collected, stored, used and disclosed in accordance with the Australian Privacy Principles. It is not expected that any such personal information would be published.
524. The Register is intended to provide an efficient and reliable method for recording registered biodiversity certificates (and appropriate details about such projects) and for tracking biodiversity certificates held and traded by scheme participants. It is intended to be a 'single source of truth' for projects covered by the scheme established under the NR Act. Collection of information relating to the identity of individuals who will have access to deal with and make transactions through the Register is necessary, appropriate and proportionate to ensuring the integrity of the Register.

Section 100 – Revocation of nomination of authorised representative

525. Section 100 of the NR Rules deals with the revocation of a nomination of an authorised representative for a Register account.
526. Subsection 100(1) provides that a Register account holder may, at any time, revoke the nomination of an authorised representative of the holder of the Register account.
527. The note following subsection 100(1) explains that the nomination of an authorised representative may have been made either in a request to open a Register account under section 89 of the NR Rules, or after the account was opened in accordance with section 99 of the NR Rules.

528. Subsection 100(2) requires the revocation of the nomination to be in writing and in the form approved by the Regulator.
529. Where the holder of a Register account revokes the nomination of an authorised representative of that person for the account, the consequence is that any approval granted under section 101 of the NR Rules for the authorised representative to access and deal with the account will no longer apply. This is because the person is no longer an ‘authorised representative’ of the holder of the Register account.

Section 101 – Approval to access and deal with Register account

530. Section 101 of the NR Rules allows the Regulator to approve an authorised representative to access and deal with a Register account. This would allow the authorised representative to manage the account on the holder’s behalf, including in relation to the transfer of biodiversity certificates to, and from, the account.
531. Subsection 101(1) provides that the Regulator may grant approval for an authorised representative of the holder of a Register account to access and deal with that Register account.
532. Subsection 101(2) has the effect that the Regulator can only grant such an approval for an authorised representative if the Regulator is satisfied that:
- the authorised representative is a fit and proper person (in accordance with Part 8 of the NR Act); and
 - if the authorised representative was nominated after the Register account was opened under section 99 of the NR Rules, the identity of the authorised representative is verified in accordance with Division 1 of Part 21 of the NR Rules. This requirement only applies to persons nominated as authorised representatives under section 99 because, for authorised representatives who were nominated when the account was opened, such identity verification would have occurred when the account was opened (see section 91 of the NR Rules).
533. Subsection 101(3) provides that, if the approval is granted, the authorised representative may view the details of the account, as well as initiate and approve transactions for the account.
534. Subsection 101(4) provides that if the Regulator refuses approval, then the Regulator must, as soon as practicable, notify the Register account holder of the decision and provide reasons.
535. In addition, if the account holder is not an individual (for example, the account holder is a body corporate) and there are no other authorised representatives for the account, the Regulator must require the account holder to nominate another individual as authorised representative. This is because all Register accounts must be either held by an individual, or have an authorised representative that is an individual, for the Regulator to contact and deal with.

536. Subsection 101(5) clarifies that, for the purposes of subsection 101(2), an SES employee who is an authorised representative for a Commonwealth Register account is taken to be a fit and proper person.
537. A decision by the Regulator to refuse to grant an approval for a nominated authorised representative to access and deal with a Register account under section 101 is a reviewable decision under paragraph 120(c) of the NR Rules.

Section 102 – Revocation of approval to access and deal with Register account

538. Section 102 of the NR Rules allows the Regulator to revoke the approval of an authorised representative to access and deal with a Register account.
539. Subsection 102(1) has the effect that the Regulator can only revoke the approval of an authorised representative to access and deal with a Register account if the Regulator is satisfied that the authorised representative is no longer a fit and proper person. Part 8 of the NR Act provides for when an individual is a fit and proper person.
540. Subsection 102(2) provides that if the Regulator revokes the approval, then the Regulator must, as soon as practicable, notify the holder of the Register account of the decision and provide reasons.
541. In addition, if the account holder is not an individual (for example, the account holder is a body corporate) and there are no other authorised representatives for the account, the Regulator must require the account holder to nominate another individual as authorised representative. This is because all Register accounts must be either held by an individual, or have an authorised representative that is an individual, for the Regulator to contact and deal with.
542. A decision by the Regulator to revoke an approval for a nominated authorised representative to access and deal with a Register account under section 102 is a reviewable decision under paragraph 120(d) of the NR Rules.

Subdivision G – Correction and rectification of Register

Section 103 – Correction of clerical errors, obvious defects or unauthorised entries etc.

543. Section 103 of the NR Rules allows the Regulator to correct and rectify the Register.
544. Subsection 103(1) provides that the Regulator may alter the Register to correct:
- a clerical error or an obvious defect in the Register; or
 - an entry made in the Register without sufficient cause; or
 - an entry wrongly existing in the Register; or
 - an entry wrongly removed from the Register.

545. Subsection 103(2) provides that the Regulator may alter the Register either on request or on the Regulator's own initiative.
546. Subsection 103(3) provides a request to alter the Register must be in writing and in the form approved by the Regulator.
547. Subsection 103(4) clarifies that the Regulator must not alter the Register in a way that is contrary to a decision of the Federal Court in proceedings under section 104 of the NR Rules. Section 104 of the NR Rules allows a person to apply to the Federal Court for rectification of the Register in certain circumstances.
548. Subsection 103(5) requires the Regulator to publish a notice on the Regulator's website that details an alteration that has been made to the Register under section 103.
549. Subsection 103(6) requires the Regulator to provide reasons to the applicant for a decision to refuse to make a requested alteration of the Register.
550. Subsection 103(7) requires the Regulator to give written notice, as soon as practicable, to the holder (if any) of the Register account if the Regulator makes an alteration to that account on their own initiative.
551. A decision by the Regulator under section 103 to either refuse to alter the Register on application by a person, or to unilaterally alter the Register is a reviewable decision under paragraph 120(e) of the NR Rules.

Section 104 – Rectification of Register

552. Section 104 of the NR Rules allows a person to apply to the Federal Court for rectification of the Register in certain circumstances.
553. Subsection 104(1) allows an aggrieved person to apply to the Federal Court for rectification of the Register because of:
- an omission of an entry from the Register;
 - an entry made in the Register without sufficient cause;
 - an entry wrongly existing in the Register;
 - an error or defect in an entry in the Register;
 - an entry wrongly removed from the Register.
554. Subsection 104(2) requires the applicant to give notice of the application to the Federal Court to the Regulator. Subsection 104(2) also provides the right for a representative of the Regulator to appear and be heard during the proceedings and requires a representative of the Regulator to appear during the proceedings if directed by the Federal Court.

555. Subsections 104(3) to (7) relate to court orders given by the Federal Court in relation to proceedings brought for rectification of the Register.
556. Subsection 104(3) provides that the Federal Court may make any order as it thinks fit directing the rectification of the Register. Subsection 104(4), however, requires that the court order must not be expressed to take effect before the order is made. This means a rectification of the Register by court order cannot be retrospective.
557. Subsection 104(5) clarifies that the Federal Court may decide any question that it is necessary or expedient to decide in connection with the rectification of the Register.
558. Subsection 104(6) provides that a copy of the court order must be given to the Regulator by the applicant.
559. Subsection 104(7) requires the Regulator to rectify the Register in accordance with a court order.

Subdivision H – Miscellaneous

Section 105 – Change of name of Register account holder

560. Section 105 of the NR Rules deals with the name of a Register account holder changing (for example, a change of name after marriage).
561. Subsection 105(1) allows a person whose Register account is kept in their name to request the Regulator to have the new name substituted for the previous name in relation to the account. Subsection 105(2) requires the request to be in writing and in the form approved by the Regulator.
562. Subsection 105(3) requires the Regulator to make the requested necessary alterations to the Register if satisfied that the person's name has changed.
563. Subsection 105(4) requires the Regulator to notify the person of the alterations made to the Register as soon as practicable after the alteration is made.
564. Subsection 105(5) requires the Regulator to notify the person, as soon as practicable, if the Regulator is not satisfied that person's name has changed and so has decided not to make the alteration that has been requested.
565. A decision by the Regulator to refuse to alter the Register in relation to a change of name request under section 105 is a reviewable decision under paragraph 120(f) of the NR Rules.

Section 106 – Requirement to notify Regulator of certain events in relation to Register accounts

566. Section 106 of the NR Rules requires a Register account holder to notify the Regulator of certain events.

567. Paragraph 167(2)(i) of the NR Act relevantly provides that the rules may make provision requiring the holders of Register accounts to notify the Regulator of certain events. Section 106 of the NR Rules is made for the purposes of paragraph 167(2)(i) of the NR Act.
568. Subsection 106(1) requires the holder of a Register account to notify the Regulator of any of the following events:
- a biodiversity certificate has been incorrectly transferred to or from the Register account;
 - a change of the holder's name, business name or trading name;
 - a change of the holder's contact details;
 - a change of the name of the holder's authorised representative;
 - a change of the contact details of the holder's authorised representative;
 - an event that is relevant to whether the holder, or the holder's authorised representative, is a fit and proper person.
569. The note to subsection 106 explains that a failure to comply with the notification requirements in subsection 106(1) may result in the holder of the account contravening the civil penalty provision at subsection 167(4) of the NR Act.
570. The maximum civil penalty that a court may order a person who is an individual to pay is 200 penalty units. A body corporate is liable for five times this amount as a maximum penalty (see subsection 82(5) of the Regulatory Powers Act).
571. Subsection 106(2) requires that the notice provided to the Regulator must be in writing in the form approved by the Regulator, and be made within 28 business days after the event occurred. The exception is where the notification relates to an incorrectly transferred biodiversity certificate; in that case the notification must be as soon as practicable.
572. For a change of name by either the account holder or authorised representative, the notice must be accompanied by a document that evidences the change.

Section 107 – Evidentiary provisions

573. Section 107 of the NR Rules clarifies that the Regulator may certify and supply a true copy of, or a true extract from, the Register. The note to section 107 directs the reader to also see section 155 of the *Evidence Act 1995*, which provides for evidence of official records.

Part 16 – Publication of information

574. Part 16 of the NR Act imposes requirements on the Regulator and the Secretary to publish certain information about registered biodiversity projects, biodiversity certificates and the operation of the NR Act.
575. Part 16 of the NR Rules is made for the purposes of Part 16 of the NR Act. Part 16 of the NR Rules (sections 108 to 110) prescribes the information the Regulator is required to publish on its website concerning biodiversity certificates and activities of the Regulator.

Section 108 – Operation of this Part

576. Section 108 of the NR Rules clarifies that Part 16 of the NR Rules (sections 108 to 110) is made for the purposes of Part 16 of the NR Act, and makes provision for or in relation to information the Regulator must publish.

Section 109 – Information about biodiversity certificates

577. Section 171 of the NR Act sets out the information that the Regulator is required to publish on its website in relation to biodiversity certificates.
578. Subsection 171(1) requires the Regulator, as soon as practicable after a biodiversity certificate is issued to a person, to publish the name of the person, and such other information relating to the certificate as is prescribed by the rules (see paragraph 171(1)(b)).
579. Subsection 171(2) requires the Regulator, as soon as practicable after a variation of a biodiversity certificate is made, to publish the name of the holder of the certificate, and such other information relating to the certificate or the variation as is prescribed by the rules (see paragraph 171(2)(b)).
580. Subsection 171(3) requires the Regulator, as soon as practicable after a biodiversity certificate is transferred from one account in the Register to another account in the Register, to publish the name of the holder of each of these accounts, and such other information relating to the certificate or transfer as is prescribed by the rules (see paragraph 171(3)(b)).
581. Section 109 of the NR Rules is made for the purposes of section 171 of the NR Act.
582. The effect of subsection 109(1) of the NR Rules is that the Regulator must, as soon as practicable after a biodiversity certificate is issued to a person, publish:
- the account number and holder of the Register account in which the certificate is held; and
 - the day on which the Regulator issued the certificate by making an entry in that Register account.
583. The effect of subsection 109(2) of the NR Rules is that the Regulator must, as soon as practicable after a variation of a biodiversity certificate is made, publish:

- the account number and holder of the Register account in which the certificate is held; and
- the day on which the variation is made; and
- details of the variation, including:
 - whether the certificate was varied under:
 - section 7 of the NR Rules (relating to a variation of the project's registration);
 - subsection 34(12) of the NR Act (relating to a variation of the permanence period for the project); or
 - section 70A of the NR Act (relating to correcting a minor or technical error in the certificate); and
 - if the certificate was varied as a result of a voluntary variation of the registration of the biodiversity project in respect of which the certificate was issued—the date the notice of the decision to vary the certificate was given to the holder of the certificate.

584. The effect of subsection 109(3) of the NR Rules is that the Regulator must, as soon as practicable after a biodiversity certificate is transferred from one Register account to another Register account, publish:

- the account number and holder of the Register account in which the certificate is held after the transfer; and
- the day on which the Regulator transfers the certificate by making an entry for the certificate in that Register account.

585. All publication requirements under section 109 must be met by publishing the required information on the Regulator's website.

586. The publication of this information on the Regulator's website is necessary to ensure that there is regular and accurate information to the market about the issuing, varying and transfer of biodiversity certificates. This ensures that participants are able to obtain accurate and up-to-date information about the supply and status of biodiversity certificates, and have confidence in conducting their business affairs.

Section 110 – Reports about activities of the Regulator

587. Section 172 of the NR Act requires the Regulator to publish on its website an annual report about the activities of the Regulator during each financial year. The report is required to be

published as soon as practicable after the end of the financial year to which the report relates. The report is required to deal with any matters prescribed by the rules (see subsection 172(2) of the NR Act).

588. The purpose of this requirement is to ensure that the Regulator provides regular and accurate information to the market about the issuing of biodiversity certificates.

589. Section 110 of the NR Rules is made for the purpose of subsection 172(2) of the NR Act and prescribes the matters that must be dealt with in a report about the activities of the Regulator under the NR Act during a financial year. These matters are:

- the number of registrations of biodiversity projects approved during the year; and
- the number of registrations of biodiversity projects varied during the year; and
- for each variation of a project's registration – whether the variation was:
 - to change the identity of the project proponent for the project; or
 - to change the project area of the project; or
 - to change the methodology determination that covers the project; or
 - to change the project's activity period; or
 - to change the project's permanence period; or
 - to remove a condition of registration; and
- the number of registrations of biodiversity projects cancelled during the year; and
- for each project registration that has been cancelled – the reason for the cancellation; and
- the number of biodiversity certificates issued during the year; and
- the number of biodiversity certificates varied during the year; and
- the number of biodiversity certificates cancelled during the year; and
- the number of deposits of biodiversity certificates approved by the Regulator during the year; and
- the number of audits required by the Regulator under Part 11 of the NR Act to be undertaken during the year of persons who are, or have been, project proponents for registered biodiversity projects; and

- for each such audit:
 - the methodology determination that covered the registered biodiversity project; and
 - for each audit completed during the year – the outcome of the audit; and
- the number of biodiversity certificates relinquished during the year; and
- for each biodiversity certificate relinquished – the reason for the relinquishment; and
- the number of civil penalty orders made during the year; and
- the number of infringement notices given during the year; and
- the number of enforceable undertakings accepted during the year; and
- the number of injunctions granted during the year.

590. The availability of this information on the Regulator’s website will also ensure the scheme is appropriately transparent, which will increase market confidence.

Part 17 – Record-keeping requirements

591. Part 17 of the NR Act deals with record keeping and project monitoring requirements. It allows the rules or the applicable methodology determination to prescribe record-keeping requirements and create civil penalty provisions for non-compliance with record-keeping requirements in the rules or in the methodology determination that covers the project. It also creates a civil penalty provision for failure to comply with project monitoring requirements that are imposed by the methodology determination that covers the project.

592. Part 17 of the NR Rules is made for the purposes of Part 17 of the NR Act. Part 17 of the NR Rules (sections 111 to 113) prescribes general record-keeping requirements relating to information relevant to the NR Act, as well as specific record-keeping requirements relating to information used to prepare a biodiversity project report.

Section 111 – Operation of this Part

593. Section 111 of the NR Rules clarifies that Part 17 of the NR Rules (sections 111 to 113) is made for the purposes of Part 17 of the NR Act, and includes requirements for the making and retention of records.

Section 112 – Record keeping requirements—general

594. Section 179 of the NR Act provides for record keeping requirements. It allows for rules to be made for the purposes of subsection 179(1) requiring a person to make a record of specified

information that is relevant to the NR Act (paragraph 179(1)(a)), and to retain the record (or a copy of the record) for 7 years after the record is made (paragraph 179(1)(b)).

595. Section 112 of the NR Rules is made for the purposes of subsection 179(1) of the NR Act. This is made clear in subsection 112(1) of the NR Rules.
596. The note to subsection 112(1) explains that a failure to comply with a record-keeping requirement under section 112 of the NR Rule may result in the project proponent contravening the civil penalty provision at subsection 179(2) of the NR Act.
597. The maximum civil penalty that a court may order a person who is an individual to pay is 200 penalty units. A body corporate is liable for five times this amount as a maximum penalty (see subsection 82(5) of the Regulatory Powers Act).
598. Subsections 112(2) and (3) are made for the purposes of paragraph 179(1)(a) of the NR Act. These subsections have the effect of specifying the information that the project proponent of a registered biodiversity project must make a record of, where the information is relevant to the NR Act. The specified information is as follows:
- correspondence between the between the project proponent and the Regulator that is relevant to the project;
 - information that substantiates any applications or notifications made under the NR Act in relation to the project;
 - biodiversity project reports about the project;
 - biodiversity audit reports (if any) relevant to the project;
 - details of any significant change to the scope or location of the project;
 - information that shows that the project continues to meet the criteria for the approval of the registration of the project under paragraphs 15(4)(a), (b), (c), (e) and (n) of the NR Act;
 - the following information in relation to the methodology determination that covers the project:
 - information that shows that the project is, and continues to be, covered by the methodology determination;
 - information that shows that the conditions (if any) set out in the methodology determination for the purposes of paragraph 45(1)(b) of the NR Act (relating to conditions that must be met before a biodiversity project can be registered) continue to be met;

- information that shows that the methodology determination is being complied with;
- information about the activities set out in the methodology determination that are being carried out for the purposes of the project (see paragraph 45(1)(h) of the NR Act);
- if the methodology determination provides that there must be a project plan for the project during a period—information that shows that the project plan is being implemented during that period;
- information that is required by the methodology determination to be recorded for the project;
- information that shows that any monitoring requirements for the project imposed by the methodology determination are being complied with, including data that is collected during monitoring;
- information that shows that the biodiversity outcome for the project has been, or is likely to be, achieved;
- information about any event that has, or is reasonably likely to, significantly increase or decrease the likelihood of the biodiversity outcome for the project being achieved;
- information provided to the Regulator for the purposes of the Regulator issuing a biodiversity certificate.

599. This information is considered critical to ensuring that projects are able to be audited and that project proponents are able to be held accountable, so far as appropriate, for achieving and maintaining the biodiversity outcome for the project. This, in turn, will increase confidence in the market.

600. Subsection 112(3) clarifies that the requirement in subsection 112(1) includes a requirement to make a record of any relevant photographs or videos.

601. Subsection 112(4) is made for the purpose of paragraph 179(1)(b) of the NR Act. It has the effect that the project proponent for a registered biodiversity project is required to retain a record made under section 112, or a copy of the record, for 7 years after the making of the record. This timeframe will allow for sufficient time for the records to be subject to an audit relating to the project, if considered appropriate.

Section 113 – Record keeping requirements—preparation of biodiversity project report

602. Subsection 180(2) of the NR Act has the combined effect of allowing the rules to require a person to retain a record (or a copy of a record) made of particular information that the person used to prepare a biodiversity project report. The rules are able to require the record

(or copy) to be retained for 7 years after the biodiversity project report was given to the Regulator.

603. Section 113 of the NR Rules is made for the purposes of subsection 180(2) of the NR Act.
604. Subsections 113(1) to (3) have the combined effect that if the project proponent for a registered biodiversity project makes a record of particular information (including photographs or videos) and uses that information to prepare a biodiversity project report, the project proponent must retain the record (or a copy of the record) for 7 years after the biodiversity project report is given to the Regulator. This timeframe will allow for sufficient time for the records to be examined as part of an audit of the biodiversity project report for which the information was used, if considered appropriate.
605. The note to subsection 113(1) explains that a failure to comply with a record-keeping requirement under section 113 of the NR Rule may result in the project proponent contravening the civil penalty provision at subsection 180(3) of the NR Act.
606. The maximum civil penalty that a court may order a person who is an individual to pay is 200 penalty units. A body corporate is liable for five times this amount as a maximum penalty (see subsection 82(5) of the Regulatory Powers Act).

Part 19 – Nature Repair Committee

607. Part 19 of the NR Act sets out provisions relating to, the Nature Repair Committee (the Committee). It provides for the Committee's establishment, and sets out its functions, procedures, membership, appointment of Committee members and the duration for which they would hold office, and the other terms and conditions on which Committee members hold office.
608. Part 19 of the NR Rules is made for the purposes of Part 19 of the NR Act. Part 19 of the NR Rules (sections 114 to 118) provides for the procedures to be followed at or in relation to meetings of the Committee.

Section 114 – Operation of this Part

609. Section 114 of the NR Rules clarifies that Part 19 of the NR Rules is made for the purposes of subsection 201(1) of the NR Act and sets out the procedures for meetings of the Nature Repair Committee.

Section 115 – Procedure at meetings

610. Section 115 of the NR Rules sets out the procedures relating to the convening of meetings of the Committee.
611. Subsections 115(1) and (2) have the combined effect that the Committee must hold meetings as are necessary to perform its functions under the NR Act, which may be conducted either face-to-face or via teleconference.

612. Subsection 115(3) provides that the Secretariat of the Committee is to:

- take minutes of Committee meetings; and
- convene Committee meetings at any time or at the request of the Chair of the Committee.

Section 116 – Quorum at meetings

613. Section 116 of the NR Rules sets out the procedures relating to the number of Committee members that are to constitute a quorum at meetings of the Committee.

614. Subsection 116(1) provides that a quorum for a Committee meeting is 4 Committee members. Under subsection 116(2), this must include the Chair of the Committee, except in the following circumstances:

- where the Chair is prevented from participating in deliberation or decision on a particular matter due to a disclosure of interest under section 203 of the NR Act; or
- where there is no Chair appointed; or
- where the Chair is incapacitated; or
- where the Chair informs the Committee their presence is not necessary for quorum at a particular meeting.

615. Subsection 116(3) has the effect that a quorum for a Committee meeting can be 3 Committee members (instead of the ordinarily required 4) where a disclosure of interest by a member of the Committee under section 203 of the NR Act prevents that member from participating in deliberation or decisions with respect to a particular matter and is required to leave the meeting, and the number of members still remaining at the meeting is 3. In these circumstances, the remaining members at the meeting constitute a quorum for the purpose of any deliberation or decision at the meeting with respect to that matter.

Section 117 – Presiding at meetings

616. Section 117 of the NR Rules sets out the procedures relating to the selection of a Committee member to preside at meetings of the Committee in the absence of the Chair.

617. The general rule is that the Chair of the Committee must preside at all meetings, unless one of the following situations apply:

- the Chair is prevented from participating in the deliberations or decisions of the Committee relation to a particular matter due to a disclosure of interest under section 203 of the NR Act. In these circumstances paragraph 208(2)(a) allows the Committee to appoint a Chair from the members present to preside at the meeting concerned during any deliberation or decision with respect to that matter; or

- there is no Chair appointed or the Chair is absent from the meeting. In these circumstances, paragraph 208(2)(b) allows the Committee to appoint a Chair from the members present to preside at the meeting.

Section 118 – Manner of deciding questions

618. Section 118 of the NR Rules sets out the procedures relating to the manner in which questions arising at a meeting of the Committee are to be decided.
619. Subsection 118(1) provides that any question arising at a Committee meeting must be determined by resolution.
620. Subsection 118(2) provides that a resolution is taken to be passed if more than half the present and voting members vote for the resolution and either:
- all members were either informed of the proposed resolution; or
 - reasonable efforts were made to inform them of the proposed resolution.

Part 20 – Review of decisions

621. Part 20 of the NR Act sets out which decisions under the NR Act are merits reviewable and who may apply for an internal and external review of the decision. It also provides for the process for internal review of decisions.
622. Part 20 of the NR Rules is made for the purposes of Part 20 of the NR Act. Part 20 of the NR Rules (sections 119 and 120) sets out additional decisions made under the NR Rules that are merits reviewable.

Section 119 – Operation of this Part

623. Section 119 of the NR Rules provides that Part 20 of the NR Rules (sections 119 and 120) is made for the purposes of Part 20 of the NR Act and prescribes the decisions under the NR Rules that are reviewable decisions.

Section 120 – Reviewable decisions

624. Section 212 of the NR Act lists decisions that are merits reviewable. Paragraph 212(s) has the effect that the rules may prescribe additional decisions that are made under the rules to also be reviewable decisions.
625. Section 120 of the NR Rules provides that the following decisions made under the NR Rules are reviewable decisions:
- a determination under paragraph 50(4)(b) that a variation of a methodology determination that covers a registered biodiversity project does apply to the project;

- a determination under paragraph 54(4)(b) that the cessation of effect of a methodology determination that covers a registered biodiversity project does not continue to cover the project;
- a decision under subsection 91(2) to refuse to open a Register account;
- a decision under subsection 97(1) to close a Register account;
- a decision under subsection 101(1) not to grant an approval to an authorised representative of the holder of a Register account to access and deal with the account;
- a decision under subsection 102(1) to revoke an approval granted to an authorised representative of the holder of a Register account to access and deal with the account;
- a decision under subsection 103(1) to refuse to alter the Register on receiving a request to make the alteration, or to alter the Register on the Regulator's initiative;
- a decision under subsection 105(3) to refuse to alter the Register to change the name of the holder of a Register account;
- a decision under subsection 128(2) to refuse to consider, or to refuse to take any action or any further action in relation to, an application or request under this instrument.

626. Reviewable decisions are subject to merits review. There are two avenues for merits review under the NR Act: internal reconsideration by the Regulator (for reviewable decisions that were made by a delegate of the Regulator) and external merits review by the Administrative Review Tribunal (for reviewable decisions that were made by the Regulator personally or that have already been internally reconsidered under Part 20 of the NR Act). The objective of merits review is to ensure that administrative decisions are correct or preferable according to the facts on which the decision was based and that all persons affected by a decision are treated fairly. Allowing access to merits review encourages quality, consistency, openness and accountability in administrative decisions made by the Regulator.

Part 21 – Miscellaneous

627. Part 21 of the NR Rules (sections 121 to 131) deals with miscellaneous matters. This includes the processes for verifying the identity of an individual, trust, or other entity (such as a body corporate), and the requirements for documents provided in accordance with those processes. Part 21 of the NR Rules also allows the Regulator to require further information in relation to an application or request made under the NR Rules and provides for the withdrawal of an application or request made under the NR Rules.

Division 1 – Identification procedures

Section 121 – Operation of this Division

628. Section 121 of the NR Rules provides that Division 1 of Part 21 of the NR Rules (sections 121 to 126) makes provision for or in relation to identification procedures that the Regulator may or must carry out in relation to matters under the NR Rules.

Section 122 – Identification evidence - individuals

629. Section 122 of the NR Rules provides for the process of verifying an individual's identity.

630. Verifying an individual's identity is relevant where a person makes an application to register a biodiversity project and where a person requests the Regulator to open a Register account in the person's name. In these situations, the identity of both the person who made the application or request (where that person is an individual), and any individual that is nominated to be an authorised representative of the person, must be verified in accordance with the processes in this section.

631. In addition, where the holder of a Register account later nominates an individual (or a different individual) to be an authorised representative of that person for the purposes of accessing the Register account, the identity of the nominated representative must also be verified in accordance with the processes in this section.

632. The processes for verifying the identity of an individual are also relevant to verification of the identity of a trustee of a trust where the trustee is an individual (see section 124 of the NR Rules).

633. Subsection 122(1) provides that an individual's identity must be verified in accordance with a procedure specified in section 122 of the NR Rules.

634. Subsection 122(2) provides that the identity of an individual may be verified by the individual consenting to the transfer of their digital identity from an identity service provider to the Regulator. Subsection 122(3), however, provides that this process of identification verification is only available if the Regulator is able to accept the person's digital identity from that service provider.

635. The term *digital identity* of an individual is defined in section 5 of the NR Rules to mean a distinct electronic representation of the individual that enables the individual to be sufficiently distinguished when interacting online with services.

636. Subsection 122(4) provides that an individual's identity may be verified by providing the following documents to the Regulator:

- if the individual is an Australian citizen or is ordinarily resident in Australia—3 documents identifying the individual, of a kind set out in clause 1 of Schedule 1, at least one of which must be a category A document (paragraph 122(4)(a));

- if the individual is a foreign person—3 documents identifying the individual, of a kind set out in clause 2 of Schedule 1, at least one of which must be a category A document (paragraph 122(4)(b));
 - if the individual’s name has changed—a document that shows the change of name (paragraph 122(4)(c)). The note to subsection 122(4) provides that examples of documents that show a change of name include a marriage certificate, a deed poll and a certificate issued by a government authority that recognises the change of name.
637. Subsection 122(5) provides that a document identifier may be provided in place of the physical document specified in subsection 122(4), but only if the Regulator is able to verify the document by provision of the document identifier to the document verification service.
638. The term *document verification service* is defined in section 5 of the NR Rules to mean the service known as the Australian Government Document Verification Service, or that service continuing in existence with a different name.
639. Subsection 122(6) provides for circumstances in which an Aboriginal person or a Torres Strait Islander is unable to provide a digital identity or the evidence mentioned in subsections 122(4) and (5).
640. In this circumstance, the identity of the individual may be verified by providing the Regulator a reference by an authorised referee that confirms the individual’s identity. Subsection 122(8) provides that the authorised referee may confirm the individual’s identity from any records within the referee’s keeping or control.
641. Subsection 122(7) defines an *authorised referee* as a person who:
- is not the individual’s parent, grandparent, sibling, child or grandchild; and
 - has known the individual for at least 12 months; and
 - is one of the following:
 - the chairperson, Secretary or chief executive officer of an incorporated indigenous organisation, including a land council, community council or housing organisation;
 - the individual’s employer;
 - a school principal or a school counsellor;
 - a minister of religion;
 - a medical practitioner;

- a treating health professional (within the meaning of section 197 of the *Social Security Act 1991*) or a manager in an Aboriginal Medical Service;
- a person who has been an officer in a Department of State in the Commonwealth or a State or Territory for at least 5 years.

Section 123 – Identification evidence – persons that are not individuals or trusts

642. Section 123 of the NR Rules provides for the process of verifying the identity of a person that is not an individual or a trust. This section covers verifying the identity of a body corporate, a body corporate that is an incorporated association or registered co-operative, a local governing body, a corporation sole, a body politic or another entity not otherwise covered.
643. Verifying the identity of such entities is relevant where a person who is such an entity makes an application to register a biodiversity project and where a person who is such an entity requests the Regulator to open a Register account in the person's name. In these situations, the identity of the person who made the application or request must be verified in accordance with the processes in this section.
644. The processes for verifying the identity of a body corporate are also relevant to verification of the identity of a trustee of a trust where the trustee is a body corporate (see section 124 of the NR Rules).
645. Subsection 123(1) provides that the identity of a person other than an individual or a trust must be verified by providing the Regulator with the following evidence:
- if the person is a body corporate:
 - the certificate of incorporation of the body (whether under Australian law or a foreign law) or, if there is no such certificate, a document with similar effect; and
 - the certificate of registration of the body with the Australian Securities Investment Commission or, if there is no such certificate, a document of similar effect;
 - if the person is a body corporate that is an incorporated association or a registered co-operative—documentary evidence that the body is an incorporated association or a registered co-operative (for example, an annual report or a constitution);
 - if the person is a body corporate that does not have an ABN—identity evidence of each officer of the body mentioned in subsection 123(2);
 - if the person is a local governing body—documentary evidence that the body is a local governing body;
 - if the person is a corporation sole—documentary evidence that the person is a corporation sole;

- if the person is a body politic—documentary evidence that the person is a body politic;
- if the person is a kind of entity not covered by a preceding paragraph—documentary evidence that the person is that kind of entity.

646. Subsection 123(2) provides that the identity evidence of the following officer or officers is required if the person is a body corporate that does not have an ABN:

- if the body is a private company, incorporated association or registered co-operative (whether or not a foreign entity), and has no more than one executive officer—the executive officer of the body;
- if the body is a foreign company that is public company—an executive officer of the body who is not an authorised representative for the body;
- if neither of the above applies to the body—2 executive officers of the body.

Section 124 – Identification evidence – trusts

647. Section 124 of the NR Rules provides for the process of verifying the identity of a person that is a trust.

648. Verifying the identity of a trust is relevant where a person who is a trust makes an application to register a biodiversity project and where a person who is a trust requests the Regulator to open a Register account in the person’s name. In these situations, the identity of the person who made the application or request must be verified in accordance with the processes in this section.

649. Section 124 provides that the following evidence must be provided to the Regulator to verify the identification of a person that is a trust:

- if there is a trust deed—the deed, or an extract of the deed that identifies the trustees and beneficiaries (or classes of beneficiary) of the trust;
- if there is no trust deed:
 - a document with similar effect to a trust deed; or
 - the certificate of registration as a trust (if any);
- for each trustee of the trust who is an individual—the evidence required under section 122 of the NR Rules to verify the identity of the trustee;
- for each trustee of the trust that is a body corporate—the evidence required under section 123 of the NR Rules to verify the identity of the body corporate.

Section 125 – General requirements for documents provided as identity evidence

650. Section 125 of the NR Rules sets out the general requirements relating to documents that are provided as identity evidence.
651. Subsection 125(2) relevantly requires that if a person provides the Regulator with identity evidence, then:
- if an approved form of application requires, or the Regulator asks to see, the original document— the person must provide the original document; or
 - otherwise—the person must provide either a certified copy of the original document or, in accordance with subsection 122(5) of the NR Rules, a document identifier in place of the document.
652. Subsection 125(3) requires the person to provide a certified true copy of a document that is not written in English. The certified copy must be prepared by a translation service accredited by the National Accreditation Authority for Translators and Interpreters Limited.

Section 126 – When documents need not be provided under this instrument

653. Section 126 of the NR Rules sets out when documents do not need to be provided to the Regulator under the NR Rules.
654. Subsection 126(2) provides that, in the following circumstances, a person is not required to provide an identity document to the Regulator:
- where the person has previously provided the document, or a certified copy of the document, in accordance with the registration requirements under the following Acts or any legislative instruments made under those Acts:
 - the *Australian National Registry of Emissions Units Act 2011*; or
 - the *National Greenhouse and Energy Reporting Act 2007*; or
 - the *Renewable Energy (Electricity) Act 2000*; and
 - the person is currently registered under the NR Act in relation to which the document was previously provided.
655. The note to subsection 126(2) directs the reader to section 222 of the NR Act for information previously given to the Regulator under either the NR Act or the CFI Act or legislative instruments made under those Acts. Section 122 of the NR Act has the effect that a person who has given information to the Regulator under either the NR Act or the CFI Act (or a legislative instrument) is taken to have given that information to the Regulator if it is required again under the NR Act on a subsequent occasion.

656. The legislative regimes listed in this section (either in subsection 126(2) or the note following that subsection) are operationally administered by the Regulator. The purpose of this provision is to prevent persons from having to provide the same information to the Regulator on multiple occasions. This will reduce unnecessary duplication and administrative burden for both applicants and the Regulator.

Division 2 – Other matters

Section 127 – Operation of this Division

657. Section 127 of the NR Rules provides that Division 2 of Part 21 of the NR Rules (sections 127 to 131) makes provision for or in relation to applications and requests made under the NR Rules.

Section 128 – Regulator may require further information

658. Section 128 of the NR Rules applies in relation to any application or request made under the NR Rules. This includes an application to vary or cancel the registration of a biodiversity project or a request to open a Register account.
659. The purpose of section 128 is to allow the Regulator, by written notice to the person who made the application or request, to require the person to either give the Regulator further information in connection with the application or request, or to provide verification by statutory declaration of a statement made in relation to the application or request. The Regulator must require any such information or verification within a period specified in the notice (subsection 128(1)).
660. If the person fails to comply with the requirement to provide further information or verification by statutory declaration, the Regulator would be able, by written notice given to the person, to refuse to consider or further consider or refuse to take any action or further action, in relation to the application or request (subsection 128(2)).

Section 129 – Approved forms may require statements to be verified by statutory declaration

661. Section 129 of the NR Rules provides that a form approved by the Regulator under the NR Rules may require statements provided in the application or request to be verified by statutory declaration.
662. Section 129 of the NR Rules is relevant in relation to forms approved for the purposes of applying to vary or cancel the registration of a biodiversity project, or for the purposes of requesting the Regulator to open a Register account.
663. The effect of this provision is to ensure that both forms approved under the NR Act and under the NR Rules can require the verification of statements made in the form by statutory declaration. This assists in ensuring that the Regulator has all relevant information to make a decision on the application or request, which helps to generate market confidence.

Section 130 – Requirements for documents

664. Section 130 of the NR Rules sets out requirements for documents that are provided with an application or request under the NR Rules.

665. Paragraph 130(1)(a) has the effect that if a document provided with an application or request is identity evidence, a certified copy of the original document must be provided.
666. Paragraph 130(1)(b) has the effect that if a document provided with an application or request is not written in English, an English translation of the document that has been prepared and certified as a true copy of the original document by a translation service accredited by the National Accreditation Authority for Translators and Interpreters Limited must also be provided.

Section 131 – Withdrawal of application or request

667. Section 131 of the NR Rules allows an applicant to withdraw an application or request made under the NR Rules at any time before the Regulator makes a decision on the application or request. It also clarifies that where an application or request is withdrawn, that a person is not prevented from making a fresh application or request.

Schedule 1 – Identification procedures

668. Schedule 1 to the NR Rules sets out the documents that may be used for identifying Australian citizens or residents, and individuals who are foreign. The documents are divided into ‘Category A’ documents and ‘Category B’ documents.
669. The note to the heading of Schedule 1 directs the reader to paragraphs 122(4)(a) and (b) of the NR Rules. Section 122 of the NR Rules provides for the process of verifying an individual’s identity. Subsection 122(4) sets out the procedure for how an individual can verify their identity by means of documentary evidence, and refers to the documents set out in Schedule 1.

Clause 1 – Documents for identifying Australian citizens or residents

670. Clause 1 of Schedule 1 to the NR Rules sets out the documents that may be used for identifying individuals who are Australian citizens or residents.
671. The documents are divided into ‘category A’ documents and ‘category B’ documents.
672. Generally, if an individual is an Australian citizen or is ordinarily resident in Australia, the individual can verify their identity by providing 3 documents identifying the individual, of a kind set out in clause 1 of Schedule 1, at least one of which must be a category A document (see paragraph 122(4)(a) of the NR Rules).

Clause 2 – Documents for identifying individuals who are foreign persons

673. Clause 2 of Schedule 1 to the NR Rules sets out documents that may be used for identifying individuals who are foreign persons.
674. The documents are divided into ‘category A’ documents and ‘category B’ documents.

675. Generally, if an individual is a foreign person, the individual can verify their identity by providing 3 documents identifying the individual, of a kind set out in clause 2 of Schedule 1, at least one of which must be a category A document (see paragraph 122(4)(b) of the NR Rules.

Schedule 2 – Repeals

676. Schedule 2 to the NR Rules provides for instruments that are repealed by the NR Rules.

Nature Repair (Committee) Rules 2024

Clause 1 – the whole of the instrument

677. Clause 1 of Schedule 2 repeals the whole of the *Nature Repair (Committee) Rules 2024* (the Committee Rules).
678. The provisions previously contained in the Committee Rules have been relocated to Part 19 of the NR Rules to ensure that all rules relating to the Nature Repair Market scheme are in one instrument. Repeal of the Committee is consequential to this change.
679. There is no change to the substance of the provisions that were previously located in the Committee Rules.

Statement of Compatibility with Human Rights

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

Nature Repair 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 *Nature Repair Act 2023* (NR Act) establishes the framework for a voluntary national market to deliver improved biodiversity outcomes. Eligible landholders who undertake projects that enhance or protect biodiversity will be able to receive a tradeable biodiversity certificate that will be tracked through a national register.

The purpose of the *Nature Repair Rules 2024* (NR Rules) is to prescribe the operational and administrative detail of the Nature Repair Market Scheme, enabled by the NR Act. These rules primarily relate to matters such as registration of projects, issuing of certificates, publishing of information on the Register and operational matters such as reporting, auditing and notifications.

The NR Act is to be supported by legislative instruments in the form of rules, biodiversity assessment instruments, and methodology determinations. These instruments will contain the operational detail necessary for the establishment and operation of the Nature Repair Market.

The NR Rules set out operational requirements relating to:

- the registration of biodiversity projects, including variation and cancellation of registration;
- excluded biodiversity projects;
- issuing of biodiversity certificates;
- publication of information, and record keeping;
- reporting, auditing and notifications;
- matters relating to the Biodiversity Market Register, including Register accounts;
- review of decisions; and
- identification procedures and documentation.

The NR Rules also incorporate the *Nature Repair (Committee Rules) 2024*, which are consequentially repealed by the NR Rules.

Human rights implications

The NR Rules engage the prohibition on arbitrary interference with privacy under Article 17 of the International Covenant on Civil and Political Rights (ICCPR).

Prohibition on arbitrary interference with privacy (Article 17 of the ICCPR)

Article 17 of the ICCPR prohibits arbitrary or unlawful interference with an individual's privacy, family, home or correspondence and protects a person's honour and reputation from unlawful attacks. The prohibition on arbitrary interference with privacy can be limited to achieve a legitimate objective where the limitations are lawful and not arbitrary. For an interference with this prohibition to be permissible, the interference must be authorised by law, be for a reason consistent with the ICCPR and be reasonable in the circumstances – that is, any interference with privacy must be proportionate to a legitimate end and be necessary in the circumstances.

Collection, use and disclosure of information

The NR Rules contains provisions that would:

- require a person to provide information in an application;
- require a person to provide further information in relation to their application;
- require a person to comply with certain reporting and notification requirements; and
- give the Regulator the power to require information or documents.

By requiring persons to provide information or documents, the NR Rules may incidentally require the provision of personal information. The collection, use and disclosure of personal information may therefore engage the prohibition on arbitrary interference with privacy.

These provisions of the NR Rules are necessary for the legitimate objective of assessing the suitability of a person to participate in the Nature Repair Market and to ensure those persons are continuing to comply with requirements under the NR Rules and the NR Act. The Regulator will require access to this information to properly assess whether to register a biodiversity project or issue a biodiversity certificate. They will also need ongoing and up-to-date information once a biodiversity certificate is issued to ensure that the project proponent is complying with their statutory obligations.

A person who provides information in an application will voluntarily participate in the regulatory system. Guidance from the Parliamentary Joint Committee on Human Rights indicates that whether a person has a reasonable expectation of privacy in the circumstances is relevant to the issue of determining whether a provision is permissible. A person who has voluntarily entered the Nature Repair Market should expect that a certain amount of personal information will need to be provided to the Regulator, and to any audit teams that assess compliance with the NR Rules and NR Act, to obtain the benefits of that system.

The interference with privacy is not arbitrary in these circumstances because the information the person needs to provide is set out in the NR Act and the NR Rules. The information a person will

need to provide may include information about their biodiversity project and their legal status. For example, a person will need to provide maps of the proposed project area before a biodiversity project in respect of that area of land can be approved and information about whether the project proponent has an appropriate legal interest or approval that would allow them to undertake the project on that project area. A person may also need to provide information on whether they are an individual, a body corporate or another legal entity, as the NR Act includes different requirements for different legal entities in some circumstances. A person who has voluntarily entered the regulatory system should be aware that they will have to provide this kind of information when they voluntarily decide to participate in the scheme.

It is also intended, to the extent that any information collected is personal information within the meaning of the Privacy Act that the powers and functions in the NR Rules will be required to be exercised in compliance with that Act. The Privacy Act regulates the collection, storage, use, disclosure and publication of personal information. It should also be noted that it is anticipated that many project proponents will be body corporates, for which the protections in the Privacy Act will not apply.

On this basis, to the extent that the provisions in the NR Rules engage the prohibition on arbitrary interference with privacy under Article 17 of the ICCPR, this limitation is necessary, proportionate and reasonable to achieve the legitimate objectives of the NR Act.

Publication of information

Part 16 of the NR Rules provides for the publication of information about the operation of the scheme:

- Section 109 requires the Regulator to publish certain information on its website after a biodiversity certificate is issued, varied, or transferred to another account. This includes the account number and holder of the Register account in which the certificate is held and into which the certificate is to be transferred.
- Section 110 requires certain matters to be included in a published report about the activities of the Regulator under the NR Act during a financial year. This includes the change in identity of a project proponent for the project, the outcome of audits undertaken, relinquishments of biodiversity certificates and the reasons for those relinquishments.

Sections 109 and 110 of the NR Rules are necessary to support a legitimate objective of the NR Act, which is to ensure that regular and accurate information is made available to the market about the issuing, varying and transfer of biodiversity certificates. The publication of information about the relinquishment of biodiversity certificates would also present a fair and accurate picture of efforts by project proponents to comply with obligations under the scheme. The publication of information is not arbitrary, as the details of the information that must be published on the Regulator's website are set out in sections 109 and 110 of the NR Rules, and a person who is participating in the scheme will be able to have a clear expectation of the information that will be published. Together with the safeguards on the use, disclosure and publication of information set out in the Privacy Act, the publication of such information on the website is reasonable and proportionate to the objectives of the NR Act.

On this basis, to the extent that these provisions engage the prohibition on arbitrary interference with privacy under Article 17 of the ICCPR, this limitation is necessary, proportionate and reasonable to achieve the legitimate objectives of the NR Act.

Registers

Part 15 of the NR Rules sets requirements relating to information that must be published on the Register, which will be made available on the Regulator's website. As the names of the project proponents for registered biodiversity projects and the holders of biodiversity certificates will be made available on the Register, it may engage the prohibition on arbitrary interference with privacy.

The publication of information on the Register is necessary for the legitimate objective of ensuring that relevant information is accessible and available to participants in the Nature Repair Market. This ensures that participants can obtain accurate and up-to-date information about the status of registered biodiversity projects and biodiversity certificates and can have confidence in conducting their business affairs. The publication of information is also not arbitrary, as the details of the information that must be recorded in entries on the Register are set out in sections 162 and 164 of the NR Act and in Part 15 of the NR Rules. A person who has opted into the voluntary Nature Repair Market should expect that a certain amount of personal information about their involvement in a particular biodiversity project will need to be made available on the Register to other participants in the market. Together with the safeguards on the use, disclosure and publication of information set out in the Privacy Act, the publication of information on the Register is also reasonable and proportionate to the objectives of the NR Act.

Under sections 163 and 163A of the NR Act, the Regulator would be able to withhold details of the project area for a registered biodiversity project, or other information that is of a kind specified in the rules, from being included in the Register if requested by a project proponent or another person and if certain criteria are met. This would be where the Regulator is satisfied that setting out the information could prejudice the biodiversity of the project area or the safety of any person or adversely impact the local Aboriginal or Torres Strait Islander community; and that such prejudice or adverse impact would outweigh the public interest in setting it out.

The above considerations indicate that, to the extent that it engages the prohibition on arbitrary interference with privacy under Article 17 of the ICCPR, the establishment and maintenance of the Register is necessary, proportionate, and reasonable in the pursuance of the legitimate objectives of the NR Act.

Conclusion

The NR Rules are compatible with human rights as to the extent that they engage and limit human rights (including under Articles 17 of the ICCPR), those limitations are reasonable, necessary and proportionate to achieve the legitimate aims of the NR Act and the NR Rules.

The Hon. Tanya Plibersek MP

Minister for the Environment and Water