

Legislation (Deferral of Sunsetting—Carbon Credits (Carbon Farming Initiative) Rule) Certificate 2025

EXPLANATORY STATEMENT

Issued by the Attorney-General in compliance with
section 15G of the *Legislation Act 2003*

INTRODUCTION

The *Legislation (Deferral of Sunsetting—Carbon Credits (Carbon Farming Initiative) Rule) Certificate 2025* (the Certificate) is made under paragraph 51(1)(c) of the *Legislation Act 2003* (the Legislation Act). It is a legislative instrument for the purposes of the Legislation Act and must be registered on the Federal Register of Legislation. The Certificate will be subjected to the disallowance provisions of the Legislation Act as the deferred sunsetting day specified in the Certificate is after the first anniversary of the originally scheduled sunsetting day, which means that subsection 51(4) of that Act (which provides an exemption from disallowance for deferrals of 12 months or less) does not apply.

OUTLINE

Sunsetting is the automatic repeal of legislative instruments after a fixed period.

The Australian Government's sunsetting framework is established under Part 4 of Chapter 3 of the Legislation Act. The purpose of the sunsetting framework is to ensure that legislative instruments are kept up to date and only remain in force for so long as they are needed.

Subsection 50(1) of the Legislation Act provides that a legislative instrument is automatically repealed on 1 April or 1 October immediately on or following the tenth anniversary of its registration. Under paragraph 51(1)(c) of the Legislation Act the Attorney-General can issue a certificate to defer the sunsetting day of an instrument for a period of either 6, 12, 18 or 24 months.

The instrument will then be repealed on the day specified in the certificate instead of the previously scheduled sunsetting day. This allows instruments to continue to be in force for a further but limited period of time after the date on which they would otherwise sunset. This removes the administrative burden of remaking instruments which would have a limited duration prior to their repeal and

potential replacement, or where circumstances prevent the making of replacement instruments prior to the sunseting day.

The Certificate defers the sunseting date of *Carbon Credits (Carbon Farming Initiative) Rule 2015* (the CFI Rule) by 24 months from 1 April 2025 to 1 April 2027.

The ability to defer sunseting dates is an integral part of the sunseting framework. It provides the necessary flexibility to ensure the standard 10-year sunseting period does not result in unintended consequences or impose an unreasonable administrative burden on Commonwealth agencies or the Parliament. In this case, the CFI Rule is expected to be remade within 24 months of the sunseting date as a result of broader legislative reforms under development by the Department of Climate Change, Energy, the Environment and Water (the department). If the Certificate were to be disallowed, there would not be enough time to remake the Instrument prior to the sunseting day.

PROCESS BEFORE CERTIFICATE WAS MADE

Regulatory impact analysis

Certificates of deferral of sunseting are machinery of government instruments, and are therefore not subject to the regulatory impact assessment requirements set out by the Office of Impact Analysis (OIA). The OIA reference for this standing exemption is ID19633.

Consultation before making

Before the Certificate was issued, the Attorney-General considered the general obligation to consult imposed by section 17 of the Legislation Act.

The CFI Rule is made under section 308 of the *Carbon Credits (Carbon Farming Initiative) Act 2011* (the CFI Act). The CFI Act aims to remove greenhouse gases from the atmosphere (sequestration) and avoid emissions of greenhouse gases by encouraging individuals and businesses to run carbon offset projects. Participants can earn Australian carbon credit units (ACCUs) for every tonne of carbon dioxide equivalent emission sequestered or avoided by a project.

In conjunction with the CFI Act, the CFI Rule provides detailed explanations of the way in which the CFI Act and the ACCU Scheme is effected and administered by the Clean Energy Regulator, including in relation to:

- information and auditing requirements for project applications and reports
- the fit and proper person test for participants

- procedures for parts of the carbon abatement purchasing process
- the length of reporting periods, and
- notification and record-keeping requirements.

Certificates of deferral are machinery in nature, and enable legislative instruments that would otherwise sunset to remain in force for a further, but strictly limited, period of time. This will minimise the administrative burden on stakeholders associated with consultation on a deferral that will only have effect for a limited amount of time. Any replacement instrument will be subject to further consultation and parliamentary oversight, including oversight of whether adequate consultation occurred with persons likely to be affected by the replacement instruments.

A 24 month deferral will allow sufficient time for the department to progress legislative amendments to the CFI Act and remake the CFI Rule with significant amendments. This will avoid the need to remake the CFI Rule in its current form for the short period of time before it is repealed and a replacement instrument is made. As such, given that deferral of the sunseting date of the CFI Rule is consistent with the policy intent of the sunseting regime and does not significantly alter existing arrangements, appropriate consultation has occurred for the purposes of section 17 of the Legislation Act.

Statutory preconditions relevant to the Certificate

If the statutory conditions in section 51 of the Legislation Act are met, an instrument's sunseting day can be deferred for 6, 12, 18 or 24 months by means of a certificate made under that section. In terms of process, the Legislation Act requires:

- a) the responsible rule-maker to apply to the Attorney-General in writing, and
- b) the Attorney-General to be satisfied that:
 - (i) the instrument would (apart from the operation of the sunseting provisions) be likely to cease to be in force within 24 months after its sunseting day
 - (ii) the proposed replacement instrument will not be able to be completed before the sunseting day for reasons that the rule-maker could not have foreseen and avoided
 - (iii) the dissolution or expiration of the House of Representatives or the prorogation of the Parliament renders it inappropriate to make a replacement instrument before a new government is formed, or
 - (iv) the Attorney-General has approved Part 4 of Chapter 3 of the Legislation Act (Sunsetting) not applying to that instrument, and
- c) the Attorney-General to issue a certificate. The explanatory statement for the certificate must include a statement of reasons for the issue of the certificate.

The rule-maker for the CFI Rule, the Hon Chris Bowen MP, Minister for Climate Change and Energy, provided a written application to the Attorney General seeking a certificate of deferral of sunseting for the Instrument. On the basis of the information contained in the statement of reasons below, the Attorney-General is satisfied that the CFI Rule would, apart from the operation of Part 4 of Chapter 3 of the Legislation Act, be likely to cease to be in force within 24 months after its sunseting day. As such, the criterion in subparagraph 51(1)(b)(i) of the Legislation Act is met.

Statement of Reasons for issuing of the Certificate

For the purposes of subsection 51(5) of the Legislation Act this section sets out the statement of reasons for issuing the Certificate.

The Certificate defers the sunseting date of the CFI Rule by 24 months to 1 April 2027 to enable the department to progress legislative reforms to the CFI Act, and remake the instrument.

In 2022, the Independent Review of ACCUs (the Chubb Review) concluded that the ACCU Scheme arrangements under the CFI Act are essentially sound but recommended several changes. The government accepted in principle all 16 recommendations of the Chubb Review.

In August 2024, the government also released its response to the Climate Change Authority's (CCA) 2023 and 2020 Reviews of the CFI Act. The CCA made 15 recommendations, of which the government agreed to three and agreed in principle to 12.

The department is currently developing legislative amendments in the form of a Bill package to implement elements of the government's response to the Chubb and CCA Reviews. These legislative reforms will have impacts on the CFI Rule, which is intended to be remade with significant amendment following the passage of the Bill. These amendments aim to enhance the integrity of the ACCU Scheme, support market stability and supply, and help Australia meet its emissions reduction targets.

Introduction of the Bill remains a priority for Government. Should Parliament pass the Bill, the Act could commence in 2025, allowing a new CFI Rule to be made by 1 April 2027.

A 24-month deferral of the sunseting day will enable sufficient time for passage of the Bill and the required adjustments to the CFI Rule to be carefully planned and designed. It will also allow for the appropriate public consultation and risk assessment to take place. A deferral will also avoid the need to remake the CFI Rule in its current form for the short period before it is amended again following passage of the Bill.

Accordingly, the CFI Rule will likely cease to be in force in its current form within 24 months of its original sunseting date.

More information

Further details on the provisions of the Certificate are provided in Attachment A.

The CFI Rule which is subject to the Certificate, and which will now sunset at a later day as specified in the Certificate, is available on the Federal Register of Legislation.

Further information may be requested from the Attorney General's Department about the operation of the Certificate, and from the Department of Climate Change, Energy, the Environment and Water about the Instrument to which the Certificate applies.

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

The *Legislation (Deferral of Sunsetting—Carbon Credits (Carbon Farming Initiative) Rule) Certificate 2025* (the Certificate) is compatible with human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011* (the Human Rights Act).

Overview of the Certificate

The Certificate is made under paragraph 51(1)(c) of the *Legislation Act 2003*. Under that paragraph the Attorney-General can issue a certificate to defer the sunseting day of an instrument for a period of either 6, 12, 18 or 24 months. The instrument will then be repealed on the day specified in the Certificate instead of the originally scheduled sunseting day. The Instrument specified in the Certificate is the *Carbon Credits (Carbon Farming Initiative) Rule 2015* (the CFI Rule):

The CFI Rule is expected to be repealed and replaced within 24 months of its scheduled sunseting day as a result of broader legislative reforms under development by the Department of Climate Change, Energy, the Environment and Water (the department).

The Certificate allows the CFI Rule to continue to be in force for a further, but limited, period of time when it would otherwise sunset. This removes the administrative burden of remaking the Instrument which would have a limited duration prior to its expected repeal and replacement, or where circumstances prevent the making of a replacement instrument prior to the sunseting day.

Human Rights Implications

A certificate of deferral of sunseting extends the operation of the instrument but does not change or affect the rights engaged under the original instrument.

The CFI Rule engages certain rights and freedoms declared by the international instruments set out in section 3 of the Human Rights Act.

The CFI Rule engages the right to privacy set out in Article 17(1) of the International Covenant on Civil and Political Rights (ICCPR). Article 17(1) provides that no one shall be subjected to arbitrary or unlawful interference with their privacy, family, home or correspondence, nor to unlawful attacks on their honour and reputation. The CFI Rule engages the right to privacy because it:

- requires a person to provide a range of information to establish the identity of project proponents and allows the Clean Energy Regulator to implement the fit and proper person test (Part 3 and Part 4), and
- imposes various reporting and notification obligations onto project proponents (Part 6).

The CFI Rule is consistent with previous proof of identity requirements under the CFI Act and has been designed to limit identity information to that which is sufficient to enable the Clean Energy Regulator to carry out its statutory functions. In particular, where the Clean Energy Regulator already has access to this information or has registered the proponent under other legislation it administers, the detailed personal information is not collected again.

Further, the CFI Rule does not authorise an unlawful interference with an individual's privacy because the CFI Rule adequately specifies the circumstances in which information may be collected. Moreover, the Clean Energy Regulator is required to handle all personal information in accordance with the *Privacy Act 1988* and is bound by the secrecy provisions in the *Clean Energy Regulator Act 2011*. In particular, Part 3 of the *Clean Energy Regulator Act 2011* includes a number of significant restrictions on the use or disclosure of information collected by the Clean Energy Regulator.

Therefore, overall, the CFI Rule is compatible with human rights because it does not unlawfully or arbitrarily interfere with an individual's privacy. To the extent that they may limit human rights, those limitations are reasonable, necessary and proportionate.

Before issuing the Certificate, the Attorney-General was satisfied that the CFI Rule would, apart from the operation of the sunseting provisions, cease to be in force within 24 months of their sunseting date. Issuing a certificate of deferral therefore avoids the need to replace the Instrument in its current form for a short period of time before it is expected to be repealed and replaced.

Instruments that are replaced will be subject to parliamentary scrutiny and oversight through the disallowance processes unless otherwise exempt. The human rights impact of the remade CFI Rule will be assessed at the time it is made, including through the requirement to prepare a Statement of Compatibility with Human Rights.

Conclusion

This Certificate is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the Human Rights Act, as to the extent that it may limit human rights, those limitations are reasonable, necessary and proportionate.

NOTES ON THE CERTIFICATE

Section 1 Name

This section provides that the Certificate is named the *Legislation (Deferral of Sunsetting—Carbon Credits (Carbon Farming Initiative) Rule) Certificate 2025*. The Certificate may be cited by this name.

Section 2 Commencement

This section provides for the Certificate to commence on the day after it is registered.

Section 3 Authority

This section provides that the Certificate is made under paragraph 51(1)(c) of the *Legislation Act 2003*.

Section 4 Deferral of sunseting

This section provides that the *Carbon Credits (Carbon Farming Initiative) Rule 2015*, for which the sunseting day is 1 April 2025, is repealed by section 51 of the *Legislation Act 2003* on 1 April 2027.

Section 5 Repeal of the instrument

This section provides that the Certificate is repealed at the start of 2 April 2027.