



# **Carbon Credits (Carbon Farming Initiative) Rule 2015**

made under section 308 of the

*Carbon Credits (Carbon Farming Initiative) Act 2011*

## **Compilation No. 18**

**Compilation date:** 8 April 2022

**Includes amendments up to:** *Carbon Credits (Carbon Farming Initiative)  
Amendment (Regeneration Projects) Rule 2022  
(F2022L00503)*

Prepared by the Department of Industry, Science, Energy and Resources

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## About this compilation

### **This compilation**

This is a compilation of the *Carbon Credits (Carbon Farming Initiative) Rule 2015* that shows the text of the law as amended and in force on 8 April 2022 (the **compilation date**).

The notes at the end of this compilation (the **endnotes**) include information about amending laws and the amendment history of provisions of the compiled law.

### **Uncommenced amendments**

The effect of uncommenced amendments is not shown in the text of the compiled law. Any uncommenced amendments affecting the law are accessible on the Legislation Register ([www.legislation.gov.au](http://www.legislation.gov.au)). The details of amendments made up to, but not commenced at, the compilation date are underlined in the endnotes. For more information on any uncommenced amendments, see the series page on the Legislation Register for the compiled law.

### **Application, saving and transitional provisions for provisions and amendments**

If the operation of a provision or amendment of the compiled law is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

### **Modifications**

If the compiled law is modified by another law, the compiled law operates as modified but the modification does not amend the text of the law. Accordingly, this compilation does not show the text of the compiled law as modified. For more information on any modifications, see the series page on the Legislation Register for the compiled law.

### **Self-repealing provisions**

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

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## Part 1—Preliminary

### 1 Name

This is the *Carbon Credits (Carbon Farming Initiative) Rule 2015*.

### 3 Authority

This instrument is made under section 308 of the *Carbon Credits (Carbon Farming Initiative) Act 2011*.

### 4 Definitions

(1) In this instrument:

**Aboriginal land council**, for an area of land, means a body corporate that:

- (a) is established under a Commonwealth, State or Territory Act for the purpose of holding, for the benefit of Aboriginal peoples or Torres Strait Islanders:
  - (i) title to land vested in it by or under that Act; or
  - (ii) an estate or interest in land granted under that Act; and
- (b) has functions relating to land that under a law of the Commonwealth, a State or a Territory is land rights land; and
- (c) consists of Aboriginal people or Torres Strait Islanders who:
  - (i) live in an area to which one or more of the body's functions relate; or
  - (ii) are registered as traditional owners of land in an area to which one or more of the body's functions relate; or
  - (iii) have an association with an area to which one or more of the body's functions relate if the persons or Islanders are accepted as members of the land council on the basis of that association.

**Act** means the *Carbon Credits (Carbon Farming Initiative) Act 2011*.

**alternative assurance project** has the meaning given by subsection 73(7).

**annual average abatement amount** has the meaning given by subsection 75(8).

**applicable bushfire legislation** means:

- (a) for a project in Western Australia, the *Bush Fires Act 1954* (WA);
- (b) for a project in the Northern Territory, the *Bushfires Management Act* (NT);
- (c) for a project in Queensland, the *Fire and Emergency Services Act 1990* (Qld).

**approved form** means a form approved, in writing, by the Regulator for a provision of this instrument.



**audit notice** means a notice given to a person under subsection 214(2) of the Act.

**audit schedule** has the meaning given by subsection 73(2).

**audit threshold** means an audit threshold set in an audit thresholds instrument.

**audit thresholds instrument** means an instrument made under subsection 75(4).

**authorised referee** has the meaning given by subsection 18(4).

**authorised representative** has the same meaning as in the Registry Regulations.

**category A document** has the meaning given by:

- (a) for an individual who is an Australian citizen or ordinarily resident in Australia—clause 1 of Schedule 1; and
- (b) for an individual who is not ordinarily resident in Australia—clause 3 of Schedule 1.

**category B document** has the meaning given by:

- (a) for an individual who is an Australian citizen or ordinarily resident in Australia—clause 2 of Schedule 1; and
- (b) for an individual who is not ordinarily resident in Australia—clause 4 of Schedule 1.

**certified copy**, of a document, means a copy of the document that has been certified as a true copy by:

- (a) if the document is provided under section 16 and paragraph (c) of this definition does not apply—one of the following persons who is in Australia:
  - (i) an officer of an authorised deposit-taking institution (within the meaning of the *Banking Act 1959*) with 5 or more continuous years of service;
  - (ii) a commissioner for declarations;
  - (iii) a judge of a court;
  - (iv) a justice of the peace;
  - (v) a legal practitioner;
  - (vi) a medical practitioner;
  - (vii) a minister of religion registered under Subdivision A of Division 1 of Part IV of the *Marriage Act 1961*;
  - (viii) a police officer;
  - (ix) a sheriff or a sheriff's officer; or
- (b) if the document is not provided under section 16 and paragraph (c) of this definition does not apply—a person mentioned in Schedule 2 to the *Statutory Declarations Regulations 1993*; or
- (c) if the person who is required to provide the document is not in Australia at the time the document must be provided—one of the following:
  - (i) an Australian embassy, Australian High Commission or Australian consulate (other than a consulate headed by an honorary consul);

- (ii) a competent authority under the Convention abolishing the Requirement of Legalisation for Foreign Public Documents, done at The Hague on 5 October 1961.

Note 1: Information about competent authorities under the Convention can be found on the Hague Conference on Private International Law's website (<http://www.hcch.net>).

Note 2: The Convention is in Australian Treaty Series 1995 No. 11 ([1995] ATS 11) and could in 2015 be viewed in the Australian Treaties Library on the AustLII website (<http://www.austlii.edu.au>).

**CFI Mapping Guidelines** means the document entitled “Carbon Farming Initiative (CFI) Mapping Guidelines”, published by the Department and as in force from time to time.

Note: The guidelines could in 2015 be viewed on the Department's website (<http://www.environment.gov.au>).

**CFI Regulations** means the *Carbon Credits (Carbon Farming Initiative) Regulations 2011*.

**child**: without limiting who is a child of a person for the purposes of this instrument, someone is the **child** of a person if he or she is a child of the person within the meaning of the *Family Law Act 1975*.

**commencement day** means the day this instrument commences.

**ERF audit report** has the same meaning as in the NGER Act.

**facility** has the same meaning as in the NGER Act.

**foreign person** means any of the following:

- (a) an individual who is not ordinarily resident in Australia;
- (b) a body corporate or a corporation sole that:
  - (i) is incorporated outside Australia; or
  - (ii) is an authority of a foreign country;
- (c) a body politic or a local governing body of a foreign country;
- (d) if paragraph (a), (b) or (c) applies to the trustee, or a majority of the trustees, of a trust—the trust.

**forward abatement estimate**, for an eligible offsets project, means an estimate of the amount of carbon abatement, in tonnes of carbon dioxide equivalent, that corresponds to the number of Australian carbon credit units likely to be issued in relation to the project in respect of:

- (a) the crediting period for the project or, if the project has more than one crediting period, the last crediting period for the project; and
- (b) any extended accounting period for the project.

Note: The forward abatement estimate for a project must be given to the Regulator:

- (a) if the project is a transitioning project—within 60 days after the commencement day (see subsection 75(9)); or
- (b) otherwise—with the application for declaration of the project as an eligible offsets project (see paragraph 13(1)(m)).

**initial audit** means an audit covered by section 74.

**integrated photovoltaic luminaire unit** means an assembled unit that:

- (a) contains the following things:
  - (i) one or more luminaires;
  - (ii) batteries;
  - (iii) photovoltaic cells; and
- (b) is not connected to an electricity grid.

**large project** has the meaning given by subsection 75(10).

**monitoring requirements**, for a project, means requirements to monitor the project that apply under:

- (a) the Act; or
- (b) the applicable methodology determination.

**natural resource management region**, for a project area, means the region to which a regional natural resource management plan that covers the project area applies.

**NGER Act** means the *National Greenhouse and Energy Reporting Act 2007*.

**nominee**: a project proponent is the **nominee** of multiple project proponents if:

- (a) the multiple project proponents have nominated the project proponent as their nominee under subsection 136(2) of the Act; and
- (b) the nomination is in force.

**old CFI Regulations** means the *Carbon Credits (Carbon Farming Initiative) Regulations 2011* as in force immediately before the commencement day.

**operational control** has the same meaning as in the NGER Act.

**ordinarily resident in Australia**: an individual is **ordinarily resident in Australia** if, at a particular time:

- (a) one of the following applies to the individual:
  - (i) the individual is in Australia and has permission to remain in Australia indefinitely;
  - (ii) the individual is not in Australia but has a right to re-enter Australia and, on re-entry, to be granted permission to remain in Australia indefinitely;
  - (iii) the individual is in Australia and has a special category visa under section 32 of the *Migration Act 1958*;
  - (iv) the individual is not in Australia, is a New Zealand citizen, holds a New Zealand passport and, on re-entry to Australia, would have the right to be granted a special category visa under section 32 of the *Migration Act 1958*; and
- (b) the individual was in Australia for 200 or more days in the 12 months immediately preceding that time.

**parent:** without limiting who is a parent of a person for the purposes of this instrument, someone is the **parent** of a person if the person is his or her child because of the definition of **child** in this subsection.

**permanence obligation period,** in relation to an eligible offsets project, means the period from the declaration of the project until the last day the Regulator could issue a notice to relinquish Australian carbon credit units under Division 3 of Part 7 of the Act.

**project eligibility requirements,** for a project, means requirements that, under any of the following, must be met for the project to be an eligible offsets project:

- (a) the Act;
- (b) the CFI Regulations;
- (c) this instrument;
- (d) the applicable methodology determination.

**project requirements,** in relation to an eligible offsets project or a part of an eligible offsets project, means requirements under the Act, or an instrument made under the Act, that relate to the project or part.

**qualified reasonable assurance conclusion** has the same meaning as in the *National Greenhouse and Energy Reporting (Audit) Determination 2009*.

**reasonable assurance conclusion** has the same meaning as in the *National Greenhouse and Energy Reporting (Audit) Determination 2009*.

**regeneration project** means either:

- (a) a project whose applicable methodology determination for the reporting period is the *Carbon Credits (Carbon Farming Initiative) (Human-Induced Regeneration of a Permanent Even-Aged Native Forest—1.1) Methodology Determination 2013* or an earlier version of that determination applicable to the project in accordance with section 125, 126, 127 or 130 of the Act; or
- (b) a project whose applicable methodology determination for the reporting period is the *Carbon Credits (Carbon Farming Initiative) (Native Forest from Managed Regrowth) Methodology Determination 2013* or an earlier version of that methodology determination applicable to the project in accordance with section 125, 126, 127 or 130 of the Act.

**registered cooperative** means a body that, under a law of the Commonwealth, a State, a Territory or a foreign country, is registered as a cooperative.

**Registry Act** means the *Australian National Registry of Emissions Units Act 2011*.

**Registry Regulations** means the *Australian National Registry of Emissions Units Regulations 2011*.

**relevant area** has the meaning given by subsection 57(1) of the Act.

**relevant environmental notice** has the meaning given by subsection 61(3).

**relevant work health and safety notice** has the meaning given by subsection 61(3).

**reportable change** has the meaning given by subsection 70(5).

**savanna emissions avoidance project** means an emissions avoidance offsets project to avoid emissions of greenhouse gases from the burning of savannas.

**savanna sequestration project** means a sequestration offsets project to:

- (a) remove carbon dioxide from the atmosphere by sequestering carbon in dead organic matter in savannas; and
- (b) avoid emissions of greenhouse gases from the burning of savannas.

**scheduled audit** has the meaning given by subsection 73(3).

**scope 1 emission** has the same meaning as in the NGER Act.

**section 27 declaration** means a declaration under section 27 of the Act in relation to an offsets project.

**soil carbon project** means a sequestration offsets project that includes removing carbon dioxide from the atmosphere by sequestering carbon in soils.

**subsequent audit** means an audit covered by section 75.

**tidal restoration project** means a sequestration offsets project:

- (a) that involves the introduction of tidal flow to support the establishment of coastal wetland ecosystems; and
- (b) whose applicable methodology determination is the *Carbon Credits (Carbon Farming Initiative—Tidal Restoration of Blue Carbon Ecosystems) Methodology Determination 2022* or an earlier version of that determination applicable to the project in accordance with sections 125, 126, 127 or 130 of the Act.

**transferee offsets project** has the meaning given by subsection 57(1) of the Act.

**transferor offsets project** has the meaning given by subsection 57(1) of the Act.

**transitioning project** means a project that was declared to be an eligible offsets project before the commencement day.

**trigger audit threshold** means a trigger audit threshold set in an audit thresholds instrument.

**triggered audit** means an audit covered by section 77, 78 or 79.

**variance audit threshold** means a variance audit threshold set in an audit thresholds instrument.

- (2) For the purposes of this instrument, if one person is the child of another person because of the definition of **child** in subsection (1), relationships traced to or through that person are to be determined on the basis that the person is the child of the other person.

#### 4A Crown lands Minister

For paragraphs (a) to (d) of the definition of *Crown lands Minister* in section 5 of the Act, the following table sets out the Crown lands Minister in relation to each State and Territory.

<b>Crown lands Minister in relation to each State and Territory</b>		
<b>Item</b>	<b>State or Territory</b>	<b>Crown lands Minister</b>
1	New South Wales	Whichever of the following applies: (a) for an area to which the <i>Crown Lands Act 1989</i> (NSW) applies—the Minister who administers that Act; (b) for an area to which the <i>Western Lands Act 1901</i> (NSW) applies—the Minister who administers that Act.
2	Victoria	The Minister who administers Part 5 of the <i>Climate Change Act 2010</i> (Vic.).
3	Queensland	The Minister who administers the <i>Land Act 1994</i> (Qld) (other than subsections 452A(2) and (3) of that Act).
4	Western Australia	The Minister who administers the <i>Land Administration Act 1997</i> (WA).
5	South Australia	The Minister who administers the <i>Crown Land Management Act 2009</i> (SA).
6	Tasmania	The Minister who administers the <i>Forestry Rights Registration Act 1990</i> (Tas.).
7	Australian Capital Territory	The Minister who administers the <i>Land Titles Act 1925</i> (ACT).
8	Northern Territory	The Minister who administers the Crown Lands Act (NT).
9	Jervis Bay Territory, and all external Territories	The Minister who administers the <i>Jervis Bay Territory Acceptance Act 1915</i> .

#### 4B Specified statutory authorities

For subparagraph (d)(ii) of the definition of *statutory authority* in section 5 of the Act, the following are specified:

- (a) an Aboriginal Land Council as defined in subsection 4(1) of the *Aboriginal Land Rights Act 1983* (NSW);
- (b) a Trust as defined in section 2 of the *Aboriginal Lands Act 1970* (Vic.);
- (c) a land trust as defined in:
  - (i) Schedule 1 to the *Aboriginal Land Act 1991* (Qld); or
  - (ii) Schedule 1 to the *Torres Strait Islander Land Act 1991* (Qld);
- (d) the Aboriginal Lands Trust established by subsection 20(1) of the *Aboriginal Affairs Planning Authority Act 1972* (WA);
- (e) the Aboriginal Lands Trust constituted under subsection 5(1) of the *Aboriginal Lands Trust Act 1966* (SA);

- (f) the Anangu Pitjantjatjara Yankunytjatjara as defined in subsection 4(1) of the *Anangu Pitjantjatjara Yankunytjatjara Land Rights Act 1981* (SA);
- (g) the Maralinga Tjarutja as defined in section 3 of the *Maralinga Tjarutja Land Rights Act 1984* (SA);
- (h) the Council as defined in section 3 of the *Aboriginal Lands Act 1995* (Tas.).

## **5 Service of documents**

If:

- (a) a document relating to an eligible offsets project is required or permitted by this instrument to be given to a project proponent; and
  - (b) there are multiple project proponents; and
  - (c) the document is given to the nominee of the multiple project proponents;
- the document is taken to have been given to each of the multiple project proponents.

### **5A Electronic notices transmitted to Regulator**

- (1) For subsection 7(2) of the Act, an electronic notice must be transmitted using the Regulator's website.
- (2) The electronic notice must be transmitted by:
  - (a) an individual who is a registered holder of the Registry account to which the notice relates; or
  - (b) an authorised representative of the registered holder who has been given access to a Registry account under subregulation 31(2) of the Registry Regulations.

## **6 Extended accounting period**

- (1) For subsection 7A(1) of the Act, an eligible offsets project that is covered by either of the following methodology determinations has an extended accounting period of 6 years:
  - (a) the *Carbon Credits (Carbon Farming Initiative—Alternative Waste Treatment) Methodology Determination 2015*;
  - (b) the *Carbon Credits (Carbon Farming Initiative—Source Separated Organic Waste) Methodology Determination 2016*.
- (2) For subsection 7A(1) of the Act, an eligible offsets project that is covered by the *Carbon Credits (Carbon Farming Initiative—Carbon Capture and Storage) Methodology Determination 2021* and does not have a return event (within the meaning of section 26 of that determination) within its crediting period, has an extended accounting period ending on the earlier of:
  - (a) the day after that return event occurs; and
  - (b) 25 years after the end of the project's crediting period.

- (3) In this section a reference to a methodology determination includes an earlier version of that methodology determination applicable to the project in accordance with sections 125, 126, 127 or 130 of the Act.



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## **Part 2—Issue of Australian carbon credit units in respect of offsets projects**

### **7 Form of application for certificate of entitlement—information to accompany application**

For paragraph 13(1)(d) of the Act, the following information must accompany an application for a certificate of entitlement in respect of an eligible offsets project for a reporting period:

- (a) the unique project identifier for the project;
- (b) the name of:
  - (i) the applicant; or
  - (ii) if there are multiple project proponents—the nominee of the project proponents;
- (c) the end date of the reporting period;
- (d) if the project is covered by item 387 of Schedule 1 to the *Carbon Farming Initiative Amendment Act 2014*—the carbon dioxide equivalent net sequestration amount for the project for the crediting period in which the reporting period is included, worked out in accordance with the applicable methodology determination;
- (e) if the project is not covered by item 387 of Schedule 1 to the *Carbon Farming Initiative Amendment Act 2014*—the carbon dioxide equivalent net abatement amount for the project for the reporting period, worked out in accordance with the applicable methodology determination;
- (f) whether, since the application for a section 27 declaration in relation to the project was made, any changes have occurred that may mean that a project proponent does not pass the fit and proper person test;
- (g) a signed statement by the applicant that the offsets report about the project for the reporting period meets the requirements in subsections 76(4) and (7) of the Act;
- (h) a signed statement by the applicant that all of the requirements in paragraphs 15(2)(a) to (h) of the Act that are relevant to the project have been met;
- (i) a signed statement by the applicant that the information included in, and the information accompanying, the application:
  - (i) meets the requirements in this section; and
  - (ii) is accurate.

### **8 Form of application for certificate of entitlement—audit requirements**

For paragraph 13(1)(e) of the Act:

- (a) an application for a certificate of entitlement in respect of an eligible offsets project for a reporting period is subject to audit under the Act if the

offsets report for the project for the reporting period is subject to audit under the Act; and

- (b) the audit report that must accompany the application is the audit report that must accompany the offsets report.

Note: For audit requirements in relation to offsets reports, see Division 3 of Part 6.

## **9 Issue of certificate of entitlement—eligibility requirements**

- (1) For paragraph 15(2)(h) of the Act, this section specifies eligibility requirements that must be met in order for a certificate of entitlement to be issued in respect of an eligible offsets project for a reporting period.

### *Requirement relating to audit reports*

- (2) It is an eligibility requirement that an audit report accompanying the application for the certificate of entitlement must set out, for each of the matters audited, one of the following results:
  - (a) a reasonable assurance conclusion;
  - (b) a qualified reasonable assurance conclusion.

### *Requirement relating to regulatory approvals*

- (3) It is an eligibility requirement that, if:
  - (a) a regulatory approval is required for the project because of a change in the way the project is being operated; and
  - (b) neither of the following apply:
    - (i) the application for a section 27 declaration in relation to the project was, in accordance with paragraph 13(1)(j), accompanied by information about the approval;
    - (ii) the section 27 declaration in relation to the project was, under subsection 28(2) of the Act, subject to the condition that the approval be obtained;

the approval must be obtained for the project.

### *Requirement relating to requirements in lieu of government program requirement*

- (4) It is an eligibility requirement that, throughout the reporting period, the project met the requirements set out in section 21.

*Requirement relating to consent*

- (5) It is an eligibility requirement that, if:
- (a) an offsets project involves carbon abatement at a facility that is, or is likely to be, a designated large facility (within the meaning of the *National Greenhouse and Energy Reporting Act 2007*) for the current financial year; and
  - (b) the project proponent, or (if there are multiple project proponents) one of the project proponents, does not have operational control of the facility;
- the project proponent, or (if there are multiple project proponents) one of the project proponents, must have consent to carry out the project from the person who has operational control of the facility immediately before the Regulator issues the certificate of entitlement under subsection 15(2) of the Act.

Note: The consent required by this subsection may already have been obtained at the declaration of the eligible offset project to comply with section 20.

*Requirement relating to compliance with bushfire legislation*

- (6) If an offsets project is a savanna emissions avoidance project or savanna sequestration project—it is an eligibility requirement that, throughout the reporting period, any burning of the project area that:
- (a) was carried out as part of the project; and
  - (b) required a permit under the applicable bushfire legislation; was carried out:
  - (c) during the time allowed under a relevant permit; or
  - (d) outside the time allowed under a relevant permit in circumstances where:
    - (i) the Regulator is satisfied that there was a reasonable excuse why activities were carried out without a relevant permit; and
    - (ii) no one was found by a court to have breached the applicable bushfire legislation because of the failure to obtain a permit; and
    - (iii) there is not a history of failure to obtain permits required by the applicable bushfire legislation in relation to the project area since the declaration of the project as an eligible offsets project.
- (7) Subsection (6) does not apply to any part of a reporting period that occurs before 1 May 2018.

**9AA Issue of certificate of entitlement—eligibility requirements for regeneration projects**

- (1) For paragraph 15(2)(h) of the Act, this section specifies eligibility requirements that must be met in order for a certificate of entitlement to be issued in respect of an eligible offsets project that is a regeneration project for a reporting period.

Note: The fact that these requirements are not met in relation to a reporting period does not mean that they cannot be met in relation to a subsequent reporting period within the crediting period; for example, if at the end of that subsequent reporting period forest cover has been attained.

- (2) If the offsets report for the reporting period was required to include information in accordance with paragraph 70(3A)(a)—it is an eligibility requirement that the information provided in the report, and any documents included in accordance with paragraph 71(c) to support such information, are sufficient to enable the Regulator to determine if the forest potential requirement of the applicable methodology determination for the reporting period is satisfied in relation to all carbon estimation areas that are included in the offsets report.
- (3) It is an eligibility requirement that all carbon estimation areas that:
- (a) are included in the offsets report for the reporting period; and
  - (b) are past their forest cover assessment date;
- have attained forest cover by or before the end of the reporting period.

Note 1: Under the applicable methodology determination for the regeneration project a project proponent may choose to re-stratify the carbon estimation areas to ensure that this requirement is met in relation to a reporting period. Under section 77A of the Act a project proponent may also choose to report on all carbon estimation areas that meet this requirement in advance of any carbon estimation areas which do not meet this requirement.

Note 2: It is intended that audit reports provided under section 79A or otherwise provided to the Regulator will be used to assist the Regulator to verify this requirement. Under subsection 9(2) if an audit report does not set out a reasonable assurance conclusion or qualified reasonable assurance conclusion a certificate of entitlement may not be issued.

- (4) For the purpose of subsection (3), a carbon estimation area has ***attained forest cover*** if:
- (a) both of the following apply:
    - (i) over 90% of the area of the carbon estimation area is identified as having forest cover in accordance with the most recent version of the maps that form the basis of the National Inventory Report;
    - (ii) that version of the maps does not identify any pre-existing forest cover in the carbon estimation area, taking into account any guidelines published by the Regulator on its website for the purpose of this subparagraph, as in force from time to time; or

Note: In 2019, the Regulator's website was <http://www.cleanenergyregulator.gov.au>. Under the applicable methodology determination for the regeneration project a project proponent may choose to re-stratify the carbon estimation areas to exclude areas shown as pre-existing forest cover, or areas that have not attained forest cover, to enable this requirement to be met in relation to a reporting period.

- (b) when assessed in 0.2 hectare portions, over 90% of those portions have attained forest cover such that the land in each portion has trees that:
  - (i) are 2 metres or more in height; and
  - (ii) provide crown cover of at least 20% of the land.

Note: The fact that a carbon estimation area is considered to have attained forest cover under this subsection does not mean that any requirements relating to forest cover or forest potential under the applicable methodology determination for the project are satisfied.

- (5) The assessment of 0.2 hectare portions for a carbon estimation area under paragraph (4)(b) must:

- (a) comply with any requirements set out in the CFI Mapping Guidelines for the purpose of this paragraph; and
- (aa) use data sources and data processing approaches that:
  - (i) the Regulator is satisfied are either:
    - (A) the same as, or equivalent to, those relied upon to demonstrate that the carbon estimation area did not have any pre-existing forest cover; or
    - (B) if it is no longer possible or appropriate to use the data sources and data processing approaches in sub-subparagraph (A)—are consistent with, or comparable to, those data sources and data processing approaches; and
  - (ii) are approved by the Regulator on a list published on its website or are otherwise approved by the Regulator in writing, having regard to the requirements of subparagraph (i); and
- (b) take into account any guidelines published by the Regulator on its website for the purpose of this paragraph, as in force from time to time.

Note: In 2018, the Regulator's website was <http://www.cleanenergyregulator.gov.au>.

(5A) For subparagraph (5)(aa)(ii), if:

- (a) a project proponent has relied upon an approval under subparagraph (5)(aa)(ii) in an offsets report covering the relevant carbon estimation area (**the first approval**); and
- (b) the project proponent has not relied on another approval under subparagraph (5)(aa)(ii) in a subsequent offsets report covering the relevant carbon estimation area;

the first approval remains relevant to the carbon estimation area despite any subsequent revocation or variation of that approval by the Regulator.

Note: While this subsection may facilitate the satisfaction of subparagraph (5)(aa)(ii), the other requirements of subsection (5) also need to be satisfied. This may not be possible if the relevant data sources or approaches are no longer available to apply to the carbon estimation area.

- (6) A carbon estimation area has passed its **forest cover assessment date**, when paragraph (a) and either paragraph (b) or (c) are satisfied:
  - (a) either:
    - (i) the carbon estimation area contains more than 5 tonnes of carbon per hectare under the modelling undertaken in accordance with the applicable methodology determination for the reporting period for the purpose of preparing the offsets report; or
    - (ii) the carbon estimation area is part of an eligible offsets project with less than 5 years of its crediting period remaining;
  - (b) if the carbon estimation area is an existing CEA—the date is after the later of:
    - (i) the date that is 15 years since the day the eligible offsets project first including the area was declared under section 27 of the Act disregarding any eligible growth disruption period; and

- (ii) the date that is 15 years since the modelling of forest regeneration commenced for the carbon estimation area disregarding any eligible growth disruption period;
- (c) if the carbon estimation area is not an existing CEA—the date more than 15 years since the modelling of forest regeneration commenced for the carbon estimation area disregarding any eligible growth disruption period.

Note: The modelling of when forest regeneration commences is often described as a regeneration event in the model where carbon stocks begin to increase in the carbon estimation area.

(7) In this section:

**carbon estimation area**, for an eligible offsets projects, has the meaning given by the applicable methodology determination for the reporting period.

**eligible growth disruption period**, means the total period of time meeting the following criteria:

- (a) occurs after carbon stocks have begun to increase following the modelling of regeneration;
- (b) during which carbon stocks are modelled not to increase under the applicable methodology determination for the reporting period;
- (c) if subparagraph (6)(b)(i) applies—does not include a period before the day the project was declared under section 27 of the Act; and
- (d) if so much of the total period that occurs after the start of the project's last or only crediting period exceeds 5 years, that period is taken to be 5 years.

Example: If a project to which paragraph (6)(c) applies had 2 years of its eligible growth disruption period before the start of its crediting period and 6 years of eligible growth disruption after the start of its crediting period, its eligible growth disruption period would be  $2+5=7$  years.

**existing CEA** means a carbon estimation area consisting only of an area that was part of the project area for a regeneration project on 15 August 2018.

**forest potential requirement** means a requirement for an area of land to have forest potential, within the meaning of the applicable methodology determination for the reporting period, for the land to be included in a carbon estimation area for the project.

**National Inventory Report** means the report of that name produced by Australia in fulfilment of its obligations under the Climate Change Convention and the Kyoto Protocol, as in force from time to time.

Note: In 2018, the National Inventory Report could be accessed from <http://www.environment.gov.au>.

**pre-existing forest cover**, for a carbon estimation area, means forest cover that existed:

- (a) if the applicable methodology determination for the reporting period is the *Carbon Credits (Carbon Farming Initiative) (Native Forest from Managed Regrowth) Methodology Determination 2013* or an earlier version of that methodology determination applicable to the project in accordance with

sections 125, 126, 127 or 130 of the Act—at the time of the decision to implement the project mechanism (within the meaning of that determination) in the carbon estimation area;

- (b) if the applicable methodology determination for the reporting period is the *Carbon Credits (Carbon Farming Initiative) (Human-Induced Regeneration of a Permanent Even-Aged Forest—1.1) Methodology Determination 2013* as in force at any time until 21 March 2016—immediately before project commencement (within the meaning of that determination) for the carbon estimation area;
- (c) if the applicable methodology determination for the reporting period is the *Carbon Credits (Carbon Farming Initiative) (Human-Induced Regeneration of a Permanent Even-Aged Forest—1.1) Methodology Determination 2013* as in force at any time after 21 March 2016—at any time during the baseline period (within the meaning of that determination) for the carbon estimation area.

*tree* means a perennial plant that has primary supporting structures consisting of secondary xylem.

## **9A Permanence period discount number—certain plantation forestry projects**

### *Short rotation plantation forestry projects*

- (1) This section applies in relation to a project:
  - (a) that includes the establishment of a plantation for the harvest of forest products that is established by planting or seeding; and
  - (b) for which the length of any of the rotations of a plantation that is part of the project from the planting, seeding or coppicing to the subsequent clearfelling during the 100 year period after the section 27 declaration will be less than 20 years.

### *Continuing plantation forestry projects*

- (1A) This section also applies in relation to a project:
  - (a) that includes the establishment or continuation of a plantation for the harvest of forest products that is established or continued by planting, seeding or coppicing; and
  - (b) whose project area includes land that, in the 7 years before the project proponent applied for the area of land to be part of the project area for the project, was managed as a plantation for the harvest of forest products; and
  - (c) for which the project activity does not only relate to the conversion of one or more plantations from short rotations (as described in paragraph (1)(b)), to long rotations of at least 20 years.

Note: Under subparagraph (c)(ii) of the definition of “permanence period discount number” in subsection 16(2) of the Act, this subsection applies to projects whose crediting period started on or after 31 January 2022 (whether or not the project was of this kind at the start of the crediting period or becomes of this kind, such as on the addition of land to the project area of the project).

- (2) For subparagraph (c)(ii) of the definition of “permanence period discount number” in subsection 16(2) of the Act, the permanence period discount number is 25%.

**9B Permanence period discount number and risk of reversal buffer number—  
savanna sequestration projects and tidal restoration projects**

- (1) This section applies in relation to a savanna sequestration project or tidal restoration project.
- (2) For subparagraph (c)(ii) of the definition of “permanence period discount number” in subsection 16(2) of the Act, the permanence period discount number is zero percent.
- (3) For subparagraph (b)(i) of the definition of “risk of reversal buffer number” in subsection 16(2) of the Act, the risk of reversal buffer number is zero percent.



## **Part 2A—Purchase of eligible carbon credit units by the Commonwealth**

### **10 Duration of carbon abatement contracts**

For paragraph 20CA(1)(a) of the Act, in setting the duration of a proposed carbon abatement contract, the Regulator must have regard to the following:

- (a) the principle that, in general, the duration of a carbon abatement contract for the purchase of Australian carbon credit units should not be longer than 7 years;
- (b) the principle that a longer duration of a carbon abatement contract for the purchase of Australian carbon credit units may be appropriate if the units are, or are to be, derived from an eligible offsets project that has a crediting period of more than 7 years;
- (c) the principle that, if a longer duration of a carbon abatement contract for the purchase of Australian carbon credit units is appropriate, the total duration of the contract should not be longer than 10 years.

### **11 Conduct of carbon abatement purchasing process**

For paragraph 20G(2)(b) of the Act, if the Regulator publishes, on the Regulator's website, guidelines that deal with the following matters in respect of a carbon abatement purchasing process, the Regulator must have regard to the guidelines in conducting the process:

- (a) the terms and conditions for participation in the process;
- (b) the form of a bid or offer in the process;
- (c) the determination of successful bids or offers;
- (d) the consequences if a participant engages in conduct that may affect the integrity of the process;
- (e) the circumstances in which a participant may be disqualified from the process;
- (f) the circumstances in which a bid or offer, or the process as a whole, may be cancelled.

### **11A Australian carbon credit units purchased by the Commonwealth under carbon abatement contracts**

- (1) For paragraph 20H(1)(a) of the Act, Australian carbon credit units purchased by the Commonwealth under a carbon abatement contract must be transferred to the Commonwealth registry account designated as the Commonwealth Emissions Reduction Fund Delivery Account.

Note: Australian carbon credits units cannot be transferred to the Commonwealth Emissions Reduction Fund Delivery Account from another Commonwealth registry account that is used for the purposes of delivering or cancelling Australian carbon credit units.

- (2) For paragraph 20H(1)(c) of the Act, Australian carbon credit units transferred to the Commonwealth Emissions Reduction Fund Delivery Account must be cancelled as soon as practicable after the units are transferred to the account.

**11B Approving forms for the conduct of carbon abatement purchasing process**

The Regulator may, in writing, approve one or more forms for the purposes of conducting carbon abatement purchase processes.

## **Part 3—Eligible offsets projects**

### **Division 1—Application for declaration of eligible offsets project**

#### **Subdivision A—Preliminary**

#### **12 Operation of this Division**

For paragraphs 23(1)(c) and (h) of the Act, this Division specifies information and documents that must accompany an application for the declaration of an offsets project as an eligible offsets project.

#### **Subdivision B—General information and document requirements**

#### **13 Information and documents to accompany application**

- (1) The following information must accompany an application for the declaration of an offsets project as an eligible offsets project, unless the Regulator advises the applicant, in writing, that the information is not required:
  - (a) the name and contact details of the applicant and whether the applicant is:
    - (i) the project proponent; or
    - (ii) the nominee of multiple project proponents;
  - (b) a description of the offsets project;
  - (c) the name of the applicable methodology determination;
  - (d) details of the sub-methods (if any), set out in the applicable methodology determination, that will be used for the project;
  - (e) details of the manner in which the applicable methodology determination will be applied to the project;
  - (f) a description of the skills and expertise (of the project proponent and any other person) that the project proponent intends to use in carrying out the offsets project consistently with the applicable methodology determination;
  - (g) if the project is an area-based offsets project—for each project area for the project:
    - (i) a description of its geographical location; and
    - (ii) its street address; and
    - (iii) its lot numbers and land title details; and
    - (iv) its local government area; and
    - (v) the name and date of the regional natural resource management plan or plans (if any) that cover the project area;
  - (h) if the project is not an area-based project and the project will be undertaken at one or more physical locations—information identifying each of the locations;

- (i) if the project is not an area-based project and the boundary of the project cannot be defined by reference to the project's location—details of how the boundary of the project will be defined and a description of that boundary;
- (j) if one or more regulatory approvals are required for the project—for each approval:
  - (i) a description of the approval, including the name of the regulatory authority responsible for issuing the approval; and
  - (ii) whether or not the approval has been issued; and
  - (iii) the applicant's authorisation that the Regulator may contact the regulatory authority to discuss whether the approval has been issued; and
  - (iv) if approval has not been issued, details of what actions the applicant has taken, or is taking, to obtain the approval; and
  - (v) if the approval has been issued, any reference number or other identifier for the approval;
- (k) whether the applicant passes the fit and proper person test;
- (l) information that shows that the applicant has the legal right to carry out the project;
- (m) a forward abatement estimate for the project;
- (n) details of how the project meets the requirements in:
  - (i) paragraph 27(4)(b) (which deals with being covered by a methodology determination); and
  - (ii) paragraph 27(4)(c) (which deals with requirements set out in the methodology determination); and
  - (iii) paragraph 27(4A)(a) (which deals with the newness requirement);
- (o) a signed declaration by the applicant that the information included in, and the information and any document accompanying the application:
  - (i) meets the requirements in this Division; and
  - (ii) is accurate;
- (p) if the project is a sequestration offsets project—an explanation of the steps intended to be undertaken to ensure carbon remains sequestered in the project area for the permanence obligation period for the project;
- (q) if the project is a savanna emissions avoidance project or a savanna sequestration project—an explanation of:
  - (i) whether native title has been determined or claimed in relation to the project area for the project; and
  - (ii) whether the project activities are, or are intended to be, covered by an indigenous land use agreement; and
  - (iii) whether the applicant has informed the relevant State or Territory Government about the project; and
  - (iv) when permits may be required under the applicable bushfire legislation to carry out the project;
- (r) if the project proponent considers the project is an alternative assurance project—information:
  - (i) to support that classification; and

- (ii) necessary to meet any requirements for the project to be an alternative assurance project.

Note 1: For subparagraph (1)(a)(ii), if the notice nominating a nominee accompanies an application, the nomination is taken to have been given immediately before the application was made (see subsection 136(4) of the Act).

Note 2: For paragraph (1)(i), examples of how the boundary of a project may be defined include the following:

- (a) the fleet of cars operated by the project proponent;
- (b) the retail customers of an energy retailer;
- (c) the lighting equipment in an industrial facility.

- (2) If the project is an area-based offsets project, the application must also be accompanied by a geospatial map that:
- (a) identifies each project area; and
  - (b) meets the requirements for identifying a project area that are set out in the CFI Mapping Guidelines.
- (3) If section 20B is relevant to the application, the application must also be accompanied by:
- (a) the new ERF plantation notification made in relation to the application; and
  - (b) any information sent in connection with that application to the designated email account (within the meaning of that section).
- (4) If the project is a regeneration project whose project area will exceed 15 hectares, the application must also be accompanied by:
- (a) if the project is a not notifiable regeneration project (within the meaning of section 20C)—a geospatial map of any farms (within the meaning of section 20C) that are wholly or partly within the project area of the project; and
  - (b) if the project is a notifiable regeneration project (within the meaning of section 20C)—the new ERF regeneration notification made in relation to the application.

## **Subdivision C—Information and documents required to establish applicant’s identity**

### **15 Information required to establish applicant’s identity**

An application for the declaration of an offsets project as an eligible offsets project must be accompanied by the information set out in each item of the following table that applies to the applicant.

<b>Information required to establish applicant’s identity</b>		
<b>Item</b>	<b>Applicant</b>	<b>Information</b>
1	All applicants	The following: <ul style="list-style-type: none"><li>(a) the applicant’s full name, address and contact details;</li><li>(b) the applicant’s status as:</li></ul>

<b>Information required to establish applicant's identity</b>		
<b>Item</b>	<b>Applicant</b>	<b>Information</b>
		<ul style="list-style-type: none"> <li>(i) an individual, including an individual who is a sole trader; or</li> <li>(ii) a body corporate; or</li> <li>(iii) a corporation sole; or</li> <li>(iv) a body politic; or</li> <li>(v) a local governing body; or</li> <li>(vi) a trust;</li> </ul> <ul style="list-style-type: none"> <li>(c) the applicant's: <ul style="list-style-type: none"> <li>(i) ABN; or</li> <li>(ii) ACN; or</li> <li>(iii) ARBN; or</li> <li>(iv) GST registration number; or</li> <li>(v) other unique number;</li> </ul> </li> <li>(d) the applicant's business name and, if different, trading name;</li> <li>(e) the address of the applicant's principal place of business.</li> </ul>
2	An applicant who is an individual, including an individual who is a sole trader	<p>The following:</p> <ul style="list-style-type: none"> <li>(a) the applicant's date of birth and residential address;</li> <li>(b) any other name by which the applicant is known;</li> <li>(c) the applicant's gender;</li> <li>(d) for an applicant who is a sole trader—each jurisdiction in which the applicant operates as a sole trader.</li> </ul>
3	An applicant that is a body corporate	<p>The following:</p> <ul style="list-style-type: none"> <li>(a) the full name and date of birth of each executive officer;</li> <li>(b) a description of the form in which the body has been incorporated;</li> <li>(c) each jurisdiction in which the body operates;</li> <li>(d) if the body is a foreign person—the name of any Australian agent through which the body conducts business.</li> </ul>
4	An applicant that is an Aboriginal and Torres Strait Islander corporation (within the meaning of the <i>Corporations (Aboriginal and Torres Strait Islander) Act 2006</i> )	The corporation's ICN (within the meaning of the <i>Corporations (Aboriginal and Torres Strait Islander) Act 2006</i> ).
5	An applicant that is a trust	<p>The following:</p> <ul style="list-style-type: none"> <li>(a) the full name and address of each trustee;</li> <li>(b) a description of the kind of trust;</li> <li>(c) each jurisdiction in which the trust operates;</li> <li>(d) for each trustee who is an individual—the information mentioned in item 2;</li> <li>(e) for each trustee that is a body corporate—the information</li> </ul>

<b>Information required to establish applicant's identity</b>		
<b>Item</b>	<b>Applicant</b>	<b>Information</b>
		mentioned in items 3 and 4 (as applicable).
6	An applicant that is a trust other than a trust that is: (a) a government superannuation fund established by legislation; or (b) registered and subject to the regulatory oversight of a Commonwealth statutory regulator in relation to its activities as a trust	Either: (a) if the terms of the trust identify the beneficiaries by reference to membership of a class—details of the class; or (b) otherwise—the following: (i) for each beneficiary who is an individual, the full name and date of birth of the beneficiary; (ii) for each beneficiary that is not an individual, the business name and, if different, trading name of the beneficiary.
7	An applicant that is a corporation sole	The full name, date of birth and address of the individual constituting the corporation sole.
8	An applicant that is an incorporated association, or a registered cooperative, that does not have a registered address or principal place of business	The full name and address of: (a) the public officer of the body; or (b) if there is no public officer—the secretary of the body; or (c) if there is no public officer or secretary—the president or treasurer of the body.
9	An applicant that is a proprietary or private company other than a company that is: (a) a publicly listed company in Australia or a wholly owned subsidiary of such a company; or (b) a company that is licensed and subject to the regulatory oversight of a Commonwealth statutory regulator in relation to its activities as a company	The name and address of any individual who owns, through one or more share holdings, over 25% of the issued capital in the company.

## 16 Documents required to establish applicant's identity

- (1) An application for the declaration of an offsets project as an eligible offsets project must be accompanied by a certified copy of the documents set out in each item of the following table that applies to the applicant.

<b>Documents required to establish applicant's identity</b>		
<b>Item</b>	<b>Applicant</b>	<b>Documents</b>
1	An applicant who is: (a) an Australian citizen; or (b) an individual ordinarily resident in Australia	Three documents, of a kind set out in Part 1 of Schedule 1, that identify the individual. At least one of the documents must be a category A document for the individual.
2	An applicant who is an individual not ordinarily resident in Australia	Three documents, of a kind set out in Part 2 of Schedule 1, that identify the individual. At least one of the documents must be a category A document for the individual.
3	An applicant who is an individual who has changed his or her name	A document that shows the change of name (for example, a marriage certificate, deed poll or certificate issued by a government authority that recognises the change of name).
4	An applicant that is a body corporate	The following: (a) the certificate of the body's incorporation (if any); (b) the certificate of the body's registration (if any) with the Australian Securities Investment Commission; (c) if the body is not registered in Australia—the certificate of the body's registration (if any) with a registry established under a law of a foreign country; (d) if there is no certificate of the body's incorporation—a document with similar effect; (e) if there is no certificate of the body's registration—a document with similar effect.
5	An applicant that is an incorporated association or a registered cooperative	Other documentary evidence that the body exists (for example, an annual report or the body's constitution).
6	An applicant that is a body corporate that does not have an ABN	The documents mentioned in items 1 to 3 (as applicable) for the following executive officers: (a) if the body is a private company, an incorporated association or a registered cooperative (whether or not a foreign person) that has 3 or more executive officers—3 of the body's executive officers; (b) if the body is a private company, an incorporated association or a registered cooperative (whether or not a foreign person) that has less than 3 executive officers—each of the body's executive officers; (c) if the body is a foreign person that is a public company—an executive officer who is not the same person the body nominates to be an authorised representative (within the meaning of the Registry Regulations).



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**Documents required to establish applicant's identity**

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<b>Item</b>	<b>Applicant</b>	<b>Documents</b>
7	An applicant that is a trust	The following: (a) if there is a trust deed—the deed, or an extract of the deed, that identifies the trustees and beneficiaries (or classes of beneficiary); (b) if there is no trust deed—either: (i) a document with similar effect to a trust deed; or (ii) the certificate of registration as a trust (if any); (c) for each trustee who is an individual—the documents mentioned in items 1 to 3 (as applicable); (d) for each trustee that is a body corporate—the documents mentioned in items 4 to 6 (as applicable).

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*Exceptions*

- (2) An application is not required to be accompanied by a certified copy of a document under subsection (1) if:
- (a) immediately before 13 December 2014, the applicant was a recognised offsets entity (within the meaning of the Act as in force at that time); and
  - (b) the applicant provided the document (or a certified copy of the document) to the Regulator in order to become a recognised offsets entity; and
  - (c) the document remains current.
- (3) An application is not required to be accompanied by a certified copy of a document under subsection (1) if:
- (a) the applicant is a registered person under:
    - (i) the NGER Act; or
    - (ii) the *Renewable Energy (Electricity) Act 2000*; and
  - (b) the applicant provided the document (or a certified copy of the document) to the Regulator in order to become a registered person under that Act; and
  - (c) the document remains current.
- (4) An application is not required to be accompanied by a certified copy of a document under subsection (1) if:
- (a) the applicant:
    - (i) has a Registry account; or
    - (ii) at the same time the applicant makes the application for the declaration of an offsets project as an eligible offsets project, the applicant also makes a request under the Registry Regulations to open a Registry account; and
  - (b) the applicant provided, or provides, the document (or a certified copy of the document) to the Regulator with the request to open the Registry account.

## 17 Form etc. of documents

- (1) If a certified copy of a document must, under section 16, accompany an application for the declaration of an offsets project as an eligible offsets project, the certified copy must be of an original document that is current at the time the application is made.
- (2) If the original document is not written in English, the application must be accompanied by:
  - (a) a certified copy of the original document; and
  - (b) an English translation 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 Ltd.

## 18 Aboriginal persons or Torres Strait Islanders

- (1) This section applies if:
  - (a) an application for the declaration of an offsets project as an eligible offsets project must, under item 1, 2 or 3 of the table in subsection 16(1), be accompanied by a document in respect of an individual; and
  - (b) the individual is an Aboriginal person or a Torres Strait Islander who does not have a document of the kind, or the required number of documents of the kind, mentioned in the item.
- (2) The application must be accompanied by a reference by an authorised referee that verifies the individual's identity.
- (3) The authorised referee may confirm the individual's identity from any records within the referee's keeping or control.
- (4) In this section:

**authorised referee**, for an individual, means a person who:

- (a) is not the individual's parent, grandparent, sibling, child or grandchild; and
- (b) has known the individual for at least 12 months; and
- (c) is one of the following:
  - (i) the chair, Secretary or chief executive officer of an incorporated Indigenous organisation, including a land council, community council or housing organisation;
  - (ii) the individual's employer;
  - (iii) a school principal or a school counsellor;
  - (iv) a minister of religion;
  - (v) a medical practitioner;
  - (vi) a treating health professional (within the meaning of subsection 197(1) of the *Social Security Act 1991*) or a manager in an Aboriginal Medical Service;
  - (vii) a person who has been an officer in a Department of State of the Commonwealth or a State or Territory for at least 5 years.

## **Division 2—Declaration of eligible offsets project**

### **Subdivision A—Content of declaration**

#### **19 Identification of project area**

- (1) For paragraph 27(3)(b) of the Act, this section sets out how a project area for an area-based offsets project is to be identified for the purposes of a section 27 declaration in relation to the project.
- (2) The section 27 declaration must include the following information about each project area for the project:
  - (a) a brief description of its geographical location;
  - (b) its street address;
  - (c) its lot numbers and land title details;
  - (d) its local government area;
  - (e) its natural resource management region.
- (3) The section 27 declaration must also include a scale map identifying each project area for the project.

### **Subdivision B—Criteria for declaration**

#### **20 Eligibility requirements—consent**

For paragraph 27(4)(l) of the Act, an eligibility requirement is that if:

- (a) an offsets project involves carbon abatement at a facility; and
- (b) the amount of scope 1 emissions of one or more greenhouse gases from the operation of the facility is likely to be more than 100 000 tonnes of carbon dioxide equivalent for one or more years in the crediting period for the project; and
- (c) the project proponent, or (if there are multiple project proponents) one of the project proponents, does not have operational control of the facility;

the project proponent, or (if there are multiple project proponents) one of the project proponents, must have consent to carry out the project from the person who has operational control of the facility.

#### **20AA Excluded offsets projects—general**

- (1) For paragraph 27(4)(m) and subsection 56(1) of the Act, the following kinds of project are excluded offsets projects:
  - (a) a project that involves an activity that:
    - (i) was mandatory under a Commonwealth, State or Territory law; and
    - (ii) is no longer mandatory because the law was repealed, or amended to be less onerous, after 24 March 2011;
  - (b) the planting of a species in an area where it is a known weed species;

- (c) the establishment of a forest under a forestry managed investment scheme for Division 394 of Part 3-45 of the *Income Tax Assessment Act 1997*;
  - (d) the establishment of vegetation on land that has been subject to illegal clearing of a native forest, or illegal draining of a wetland;
  - (e) the establishment of vegetation on land that has been subject to clearing of a native forest, or draining of a wetland (that was not an illegal clearing or draining), within:
    - (i) 7 years of the lodgement of an application for the project to be declared an eligible offsets project; or
    - (ii) if there is a change in ownership of the land that constitutes the project area, after the clearing or the draining—5 years of the lodgement of an application for the project to be declared an eligible offsets project;
  - (f) a project that protects native forest on freehold or leasehold land, for which a clearing consent or harvest approval plan was granted on the basis that the clearing or harvesting of the native forest:
    - (i) would lead to an environmental improvement or benefit, or would maintain an environmental outcome; or
    - (ii) was for fire management purposes.
- (2) Subparagraph (1)(f)(i) does not apply to a project if:
- (a) the clearing consent or harvest approval plan provides options for vegetation management; and
  - (b) the project provides active and on-going management of the project area in accordance with one of those options.

- (3) In this section:

**2006 IPCC Guidelines for National Greenhouse Gas Inventories** means the report titled *IPCC 2006, 2006 IPCC Guidelines for National Greenhouse Gas Inventories*, prepared by the National Greenhouse Gas Inventories Programme, as in force from time to time.

Note: In 2022 the report is accessible at [www.ipcc.ch/](http://www.ipcc.ch/).

**clearing** means the conversion, caused by people, of native forest to cropland, grassland or settlements (within the meaning of “cropland”, “grassland” and “settlements” in the *2006 IPCC Guidelines for National Greenhouse Gas Inventories*).

**consent** means approval to commence clearing or conversion to a plantation, required by Commonwealth, State or Territory law, issued by the relevant Commonwealth, State, Territory or local regulatory authority responsible for giving the approval.

**forest** means land of a minimum area of 0.2 of a hectare on which trees:

- (a) have attained, or have the potential to attain, a crown cover of at least 20% across the area of land; and
- (b) have reached, or have the potential to reach, a height of at least 2 metres.

**forestry managed investment scheme** has the meaning given by subsection 394-15(1) of the *Income Tax Assessment Act 1997*.

**harvest approval plan** means a plan prepared in accordance with Commonwealth, State or Territory law, that identifies:

- (a) geographic areas of native timber forest scheduled for harvesting; and
- (b) when the harvest will occur; and
- (c) the estimated volume of native timber forest to be harvested.

**known weed species** means a plant species which:

- (a) is on the Weeds of National Significance list produced by the Australian Government for the purpose of identifying weeds; or
- (b) is declared under any of the following Acts:
  - (i) the *Biosecurity Act 2015* of New South Wales;
  - (ii) the *Catchment and Land Protection Act 1994* of Victoria;
  - (iii) the *Biosecurity Act 2014* of Queensland;
  - (iv) the *Biosecurity and Agriculture Management Act 2007* of Western Australia;
  - (v) the *Agriculture and Related Resources Protection Act 1976* of Western Australia;
  - (vi) the *Natural Resources Management Act 2004* of South Australia;
  - (vii) the *Weed Management Act 1999* of Tasmania;
  - (viii) the *Pest Plants and Animals Act 2005* of the Australian Capital Territory;
  - (ix) the *Weeds Management Act 2001* of the Northern Territory.

Note: In 2022 the Weeds of National Significance list is accessible at <https://weeds.org.au/>

**native forest** means an area of land that:

- (a) is dominated by trees that:
  - (i) are located within their natural range; and
  - (ii) have attained, or have the potential to attain, a crown cover of at least 20% of the area of land; and
  - (iii) have reached, or have the potential to reach, a height of at least 2 metres; and
- (b) is not a plantation.

**plantation** means a forest established for harvest.

**tree** means a perennial plant that has primary supporting structures consisting of secondary xylem.

**wetlands** are areas of marsh, fen, peatland or water:

- (a) that are either temporary or permanent; and
- (b) which have water that can be static or flowing, fresh, brackish or salty; and includes areas of marine water the depth of which at low tide is not more than 6 metres.

### **20AB Excluded offsets projects—specified tree planting**

- (1) For paragraph 27(4)(m) and subsection 56(1) of the Act, specified tree planting is an excluded offsets project unless it is mentioned in subsections (2) to (6) or subsection (9).
- (2) Specified tree planting is not an excluded offsets project if the planting is a permanent planting that is also an environmental planting.
- (3) Specified tree planting is not an excluded offsets project if the project proponent demonstrates that the planting contributes to the mitigation of dryland salinity in accordance with the Salinity Guidelines.
- (4) Specified tree planting is not an excluded offsets project if the project area is in a region in relation to which the Water Department has determined that the commitments by the relevant State or Territory government under the National Water Initiative to manage water interception by plantations have been adequately implemented.
- (5) Specified tree planting is not an excluded offsets project if the project area is in a region specified in writing that:
  - (a) specifies one or more regions each of which:
    - (i) is within an area that, according to the CFI rainfall map, receives more than 600 mm long-term average annual rainfall; and
    - (ii) is a region in which the planting of trees is unlikely to have a material adverse impact on the availability of water; and
  - (b) is published on the Department’s website;  
as the writing exists from time to time.
- (6) Specified tree planting is not an excluded offsets project if the project proponent holds a water access entitlement that:
  - (a) grants or confers an entitlement to water in the project area; and
  - (b) relates to either groundwater or surface water, or both, depending on the water resource management arrangements applicable in the project area; and
  - (c) is held from the date that is no later than 2 years after the forest is first planted for the duration of the project; and
  - (d) provides a long-term average yield, per year, of at least 90% of the volume of water required as an offset, calculated in accordance with the formula in subsection (8).
- (7) However, subsection (6) does not apply if the water to which the water access entitlement relates is held, taken, intercepted, stored or used for any purpose other than to offset the water intercepted by the forest.
- (8) The volume of water (in megalitres) required as an offset per year for the life of the project is to be calculated using the following formula:

$$A \times 0.9 + B \times 1.2 + C \times 1.5 + D \times 1.8 + E \times 2.1$$

where:

**A** is the area (in hectares) of the project area that, according to the CFI rainfall map, receives between 600–700 mm long-term average annual rainfall;

**B** is the area (in hectares) of the project area that, according to the CFI rainfall map, receives between 700–800 mm long-term average annual rainfall;

**C** is the area (in hectares) of the project area that, according to the CFI rainfall map, receives between 800–900 mm long-term average annual rainfall;

**D** is the area (in hectares) of the project area that, according to the CFI rainfall map, receives between 900–1 000 mm long-term average annual rainfall;

**E** is the area (in hectares) of the project area that, according to the CFI rainfall map, receives more than 1 000 mm long-term average annual rainfall.

Note: The figures in the formula are based on the following volumes of water required as an offset per hectare per year in each of the areas of long-term average annual rainfall as indicated by the CFI rainfall map:

0.9 ML of water—600–700 mm of rain

1.2 ML of water—700–800 mm of rain

1.5 ML of water—800–900 mm of rain

1.8 ML of water—900–1 000 mm of rain

2.1 ML of water—greater than 1 000 mm of rain.

- (9) Specified tree planting is not an excluded offsets project if:
- (a) the project area is in a region in which it is not possible to obtain a water access entitlement; and
  - (b) the Regulator, after seeking the advice of the relevant State or Territory agency that manages the water resource and other expert advice as necessary, is satisfied that there is no material impact on water availability, or on the reliability of existing water access entitlements, in or near the project area, for the duration of the project.
- (10) However, paragraph (9)(a) does not apply to a project in relation to which it is not possible to obtain a water access entitlement because the relevant catchment is fully allocated.

- (11) In this section:

**Bureau of Meteorology** means the Commonwealth Bureau of Meteorology.

**CFI rainfall map** means the map:

- (a) that shows long-term average annual rainfall; and
- (b) that uses data that is:
  - (i) collected by the Bureau of Meteorology; and
  - (ii) processed by the Department; and
- (c) published on the Department's website; and
- (d) as in force from time to time.

Note: In 2022 the map is accessible at [www.industry.gov.au](http://www.industry.gov.au)

***dryland salinity*** means a build-up of salt in soil occurring on land not subject to irrigation.

***environmental planting*** means a planting that consists of species that:

- (a) are native to the local area of the planting; and
- (b) are sourced from seeds:
  - (i) from within the natural distribution of the species; and
  - (ii) that are appropriate to the biophysical characteristics of the area of the planting; and
- (c) may be a mix of trees, shrubs, and understorey species where the mix reflects the structure and composition of the local native vegetation community.

***forest*** means land of a minimum area of 0.2 of a hectare on which trees:

- (a) have attained, or have the potential to attain, a crown cover of at least 20% across the area of land; and
- (b) have reached, or have the potential to reach, a height of at least 2 metres.

***landscape planting*** means a planting in an urban centre or locality as follows:

- (a) in a residential place (for example, in a backyard, park or on a nature strip);
- (b) on the grounds of a sporting facility, factory or other commercial facility;
- (c) on the grounds of a hospital, school or other institution;
- (d) in a car park or cemetery.

***locality*** means a population cluster of at least 200 people.

***National Water Initiative*** means the Intergovernmental Agreement on a National Water Initiative between the Commonwealth of Australia and the Governments of New South Wales, Victoria, Queensland, Western Australia, South Australia, Tasmania, the Australian Capital Territory and the Northern Territory, as amended from time to time.

Note: In 2022 the agreement is available at <https://www.awe.gov.au/water/policy/policy/nwi>

***natural distribution***, for a species of vegetation, means the areas within which that species would naturally occur.

***permanent planting*** means a planting:

- (a) that is not harvested other than:
  - (i) for thinning for ecological purposes; or
  - (ii) to remove debris for fire management; or
  - (iii) to remove firewood, fruits, nuts, seeds, or material used for fencing or as craft materials, if those things are not removed for sale; or
  - (iv) in accordance with traditional indigenous practices or native title rights; and
- (b) that is not a landscape planting.

***plantation*** means a forest established for harvest.



**Salinity Guidelines** means the guidelines, published on the Department’s website as in force from time to time, to assist project proponents to determine whether the planting of trees is an excluded offsets project for subsection 56(1) of the Act.

Note: In 2022 the guidelines are accessible at [www.industry.gov.au](http://www.industry.gov.au)

**specified tree planting** means the planting of trees in an area that, according to the CFI rainfall map, receives more than 600 mm long-term average annual rainfall.

**tree** means a perennial plant that has primary supporting structures consisting of secondary xylem.

**water access entitlement** means an entitlement to water held in accordance with the relevant law in the jurisdiction in which the project area is located.

**Water Department** means the Department of State that deals with water policy and resources and that is administered by the Minister administering the *Water Act 2007*.

**water interception** means the interception of surface water or ground water that would otherwise flow, directly or indirectly, into a watercourse, lake, wetland, aquifer, dam or reservoir.

## **20A Eligibility requirement—project area not to be used to offset or compensate for adverse impact on vegetation**

For paragraph 27(4)(l) of the Act, an eligibility requirement is that the project area, or any part of it, is not used to meet an obligation under a Commonwealth, State or Territory law to offset or compensate for the adverse impact of an action on vegetation.

## **20B Excluded offsets project—certain new plantation forests**

- (1) For paragraph 27(4)(m) and subsection 56(1) of the Act, if the project involves the establishment of a new plantation forest and this section applies to an application under section 22 of the Act—the project is an excluded offsets project if:
  - (a) the project proponent did not make a new ERF plantation notification meeting all of the following criteria:
    - (i) the new ERF plantation notification was made in the period beginning 18 months before the date of the application under section 22 of the Act and ending on the day of that application (inclusive);
    - (ii) all of the proposed project area for the project is within the potential project area set out in the new ERF plantation notification;
    - (iii) the size of the proposed project area does not exceed the maximum project area size set out in the new ERF plantation notification;
    - (iv) the new ERF plantation notification has not previously been relied upon in relation to an application under section 22 of the Act that

- resulted in a declaration of an eligible offsets project under subsection 27(2) of the Act;
- (b) both of the following apply:
- (i) within 30 days of a new ERF plantation notification being made the Agriculture Minister has sent the project proponent and the Regulator a written statement:
    - (A) stating that the Agriculture Minister intends to make an adverse impact finding in relation to the notification; and
    - (B) inviting the project proponent to send a written response to the designated email account within 20 days;
  - (ii) one of the following applies:
    - (A) within 30 days of sending the written statement referenced in subparagraph (1)(b)(i) the Agriculture Minister sends another written statement to the project proponent and Regulator stating that no written response to the first statement was sent within the 20 days; or
    - (B) within 45 days of sending the written statement referenced in subparagraph (1)(b)(i) the Agriculture Minister sends another written statement to the project proponent and Regulator making an adverse impact finding in relation to the notification; or
    - (C) less than 45 days have passed since the written statement referenced in subparagraph (1)(b)(i) was sent.
- (2) For paragraph 27(4)(m) and subsection 56(1) of the Act, if the project involves the establishment of a new plantation forest and this section applies to an application under subsection 23(3)—the project is an excluded offsets project if the effect of the application is to add an area of land to the project area for the project and:
- (a) the project proponent did not make an ERF plantation expansion notification meeting all of the following criteria:
    - (i) the ERF plantation expansion notification was made in the period beginning 18 months before the date of the application under subsection 23(3) and ending on the day of that application (inclusive);
    - (ii) all of the proposed additional project area for the project is within the potential additional project area set out in the ERF plantation expansion notification;
    - (iii) the size of the additional project area does not exceed the maximum additional project area size set out in the ERF plantation expansion notification;
    - (iv) the ERF plantation expansion notification has not previously been relied upon in relation to an application under subsection 23(3) that resulted in a variation of the declaration under subsection 23(1); or
  - (b) both of the following apply:

- (i) within 30 days of an ERF plantation expansion notification being made the Agriculture Minister has sent the project proponent and the Regulator a written statement:
  - (A) stating that the Agriculture Minister intends to make an adverse impact finding in relation to the notification; and
  - (B) inviting the project proponent to send a written response to the designated email account within 20 days;
- (ii) one of the following applies:
  - (A) within 30 days of sending the written statement referenced in subparagraph (2)(b)(i) the Agriculture Minister sends another written statement to the project proponent and Regulator stating that no written response to the first statement was sent within the 20 days; or
  - (B) within 45 days of sending the written statement referenced in subparagraph (2)(b)(i) the Agriculture Minister sends another written statement to the project proponent and Regulator making an adverse impact finding in relation to the notification; or
  - (C) less than 45 days have passed since the written statement referenced in subparagraph (2)(b)(i) was sent.
- (3) For the purposes of subsection (1) or (2):
  - (a) if a project proponent makes more than one new ERF plantation notification or ERF plantation expansion notification relevant to an application, it is the last notification to which those subsections apply; and
  - (b) if a purported notification is incomplete, that notification is invalid and is taken never to have been made.
- (4) If the Agriculture Minister sends the project proponent and Regulator a written statement stating that an earlier written statement covered by subsection (1) or (2) is to be disregarded, the earlier statement is taken never to have been sent.
- (5) If there are multiple project proponents in relation to a project, an ERF plantation expansion notification or new ERF plantation notification need only be made by one of those project proponents.
- (6) The Agriculture Minister must arrange for new ERF plantation notifications and ERF plantation expansion notifications to be sent to the Regulator along with the date those notifications were made.
- (7) If the Regulator receives an application under section 22 of the Act or subsection 23(3) to which this section applies, the Regulator must not make a decision on whether to make a declaration under section 27 of the Act or decision under subsection 23(1) until:
  - (a) if a written statement is sent under subparagraph 20B(1)(b)(i) or 20B(2)(b)(i)—either:
    - (i) more than 45 days have passed since that statement was sent; or

- (ii) another written statement is sent under sub-subparagraphs 20B(1)(b)(ii)(A) or (B) or sub-subparagraphs 20B(2)(b)(ii)(A) or (B);  
or
  - (b) otherwise—more than 30 days have passed since the new ERF plantation notification or ERF plantation expansion notification was made.
- (8) In this section:

***adverse impact finding*** means:

- (a) in relation to a new ERF plantation notification—a finding that if the project went ahead there would, in the opinion of the Minister, be an undesirable impact on agricultural production in the region where the project would be located; or
- (b) in relation to an ERF plantation expansion notification—a finding that if the project went ahead in the additional project area there would, in the opinion of the Minister, be an undesirable impact on agricultural production in the region where the additional project area would be located.

***Agriculture Minister*** means:

- (a) the Minister administering the *Agricultural and Veterinary Chemicals Act 1994*; or
- (b) an SES employee, or acting SES employee, delegated responsibilities relating to this section by the Minister covered by paragraph (a).

***designated email account*** means the email address published by the Agriculture Minister on their Department’s website for receiving information relevant to this section.

***ERF plantation expansion notification*** means a notification to the designated email account that:

- (a) states that the project proponent is planning to vary the declaration of an existing eligible offsets project to add an area of land to the project area for the project; and
- (b) attaches a geospatial map of the potential additional project area that could be added to the project in accordance with the CFI Mapping Guidelines; and
- (c) sets out the maximum additional project area size, in hectares, that will be added to the project area of the project; and
- (d) contains the name, address and contact details of the project proponent, including a nomination of an email account for the receipt of all correspondence relating to the notification; and
- (e) lists the known addresses of land within the potential additional project area; and
- (f) includes the following statements in the form specified in any guidelines relating to this section published by Agriculture Minister on their Department’s website:

- (i) a statement setting out the previous five years of agricultural land use history within the potential additional project area, including the area, in hectares, of each land use type;
  - (ii) unless a statutory declaration is provided setting out why an agricultural production history is unavailable to the project proponent—a statement setting out the previous five years of agricultural production history of agricultural commodities within the potential additional project area;
  - (iii) a statement assessing the project’s potential impact on agricultural production in the region, that takes into account in any guidelines relating to this section published by the Agriculture Minister on their Department’s website; and
- (g) contains information required by any guidelines relating to this section published by the Agriculture Minister on their Department’s website.

Note: The potential additional project area could be a precise project area on which the additional project area is to be located or the boundaries of an area the project proponent is looking to define a smaller additional project area in up to the maximum size provided under paragraph (c). Applicants need not have acquired any of the land in the potential additional project area before making an ERF plantation expansion notification.

***incomplete***, in relation to a new ERF plantation notification or ERF plantation expansion notification, includes a notification which does not include the information or documents required by the definition of that notification.

***new ERF plantation notification*** means a notification to the designated email account that:

- (a) states that the project proponent is planning to seek the declaration of a project to establish a new plantation forest as an eligible offsets projects; and
- (b) attaches a geospatial map of the potential project area for the project in accordance with the CFI Mapping Guidelines; and
- (c) sets out the maximum project area size, in hectares, for all of the proposed project areas of the project; and
- (d) contains the name, address and contact details of the project proponent, including a nomination of an email account for the receipt of all correspondence relating to the notification; and
- (e) lists the known addresses of land within the potential project area; and
- (f) includes the following statements in the form specified in any guidelines relating to this section published by Agriculture Minister on their Department’s website:
  - (i) a statement setting out the previous five years of agricultural land use history within the potential project area, including the area, in hectares, of each land use type;
  - (ii) unless a statutory declaration is provided setting out why an agricultural production history is unavailable to the project proponent—a statement setting out the previous five years of

agricultural production history of agricultural commodities within the potential project area;

- (iii) a statement assessing the project's potential impact on agricultural production in the region, that takes into account in any guidelines relating to this section published by the Agriculture Minister on their Department's website; and
- (g) contains information required by any guidelines relating to this section published by the Agriculture Minister on their Department's website.

Note: The potential project area could be a precise project area on which the project area is to be located or the boundaries of an area the project proponent is looking to define a smaller project area in up to the maximum size provided under paragraph (c). Applicants need not have acquired any of the land in the potential project area before making a new ERF plantation notification.

***plantation forest*** means a plantation for the harvest of forest products that is established by planting or seeding.

## **20C Excluded offsets project—notififiable regeneration projects**

- (1) For paragraph 27(4)(m) and subsection 56(1) of the Act, if the project is a notififiable regeneration project and this section applies to an application under section 22 of the Act—the project is an excluded offsets project if:
  - (a) the project proponent did not make a new ERF regeneration notification meeting all of the following criteria:
    - (i) the new ERF regeneration notification was made in the period beginning 18 months before the date of the application under section 22 of the Act and ending on the day of that application (inclusive);
    - (ii) all of the proposed project area for the project is within the potential project area set out in the new ERF regeneration notification;
    - (iii) the size of the proposed project area does not exceed the maximum project area size set out in the new ERF regeneration notification;
    - (iv) the new ERF regeneration notification has not previously been relied upon in relation to an application under section 22 of the Act that resulted in a declaration of an eligible offsets project under subsection 27(2) of the Act; or
  - (b) both of the following apply:
    - (i) within 30 days of a new ERF regeneration notification being made the Agriculture Minister has sent the project proponent and the Regulator a written statement:
      - (A) stating that the Agriculture Minister intends to make an adverse impact finding in relation to the notification; and
      - (B) setting out the basis for that finding; and
      - (C) inviting the project proponent to send a written response to the designated email account within 20 days;
    - (ii) one of the following applies:
      - (A) within 30 days of sending the written statement referenced in subparagraph (1)(b)(i) the Agriculture Minister sends another

- written statement to the project proponent and Regulator stating that no written response to the first statement was sent within the 20 days;
- (B) within 45 days of sending the written statement referenced in subparagraph (1)(b)(i) the Agriculture Minister sends another written statement to the project proponent and Regulator making an adverse impact finding in relation to the notification.
- (2) For paragraph 27(4)(m) and subsection 56(1) of the Act, if the project is a notifiable regeneration project and this section applies to an application under subsection 23(3)—the project is an excluded offsets project if the effect of the application is to add an area of land to the project area for the project and:
- (a) the project proponent did not make an ERF regeneration expansion notification meeting all of the following criteria:
- (i) the ERF regeneration expansion notification was made in the period beginning 18 months before the date of the application under subsection 23(3) and ending on the day of that application (inclusive);
  - (ii) all of the proposed additional project area for the project is within the potential additional project area set out in the ERF regeneration expansion notification;
  - (iii) the size of the additional project area does not exceed the maximum additional project area size set out in the ERF regeneration expansion notification;
  - (iv) the ERF regeneration expansion notification has not previously been relied upon in relation to an application under subsection 23(3) that resulted in a variation of the declaration under subsection 23(1); or
- (b) both of the following apply:
- (i) within 30 days of an ERF regeneration expansion notification being made the Agriculture Minister has sent the project proponent and the Regulator a written statement:
    - (A) stating that the Agriculture Minister intends to make an adverse impact finding in relation to the notification; and
    - (B) setting out the basis for that finding; and
    - (C) inviting the project proponent to send a written response to the designated email account within 20 days;
  - (ii) one of the following applies:
    - (A) within 30 days of sending the written statement referenced in subparagraph (2)(b)(i) the Agriculture Minister sends another written statement to the project proponent and Regulator stating that no written response to the first statement was sent within the 20 days;
    - (B) within 45 days of sending the written statement referenced in subparagraph (2)(b)(i) the Agriculture Minister sends another written statement to the project proponent and Regulator making an adverse impact finding in relation to the notification.

- (3) For the purposes of subsection (1) or (2):
- (a) if a project proponent makes more than one new ERF regeneration notification or ERF regeneration expansion notification relevant to an application, it is the last notification to which those subsections apply; and
  - (b) if a purported notification is incomplete, that notification is invalid and is taken never to have been made.
- (4) If the Agriculture Minister sends the project proponent and Regulator a written statement stating that an earlier written statement covered by subsection (1) or (2) is to be disregarded, the earlier statement is taken never to have been sent.
- (5) If there are multiple project proponents in relation to a project, an ERF regeneration expansion notification or new ERF regeneration notification need only be made by one of those project proponents.
- (6) The Agriculture Minister must arrange for new ERF regeneration notifications and ERF regeneration expansion notifications to be sent to the Regulator along with the date those notifications were made.
- (7) If the Regulator receives an application under section 22 of the Act or subsection 23(3) to which this section applies, the Regulator must not make a decision on whether to make a declaration under section 27 of the Act or decision under subsection 23(1) until:
- (a) if a written statement is sent under subparagraph (1)(b)(i) or (2)(b)(i)—one of the following applies:
    - (i) more than 45 days have passed since that statement was sent;
    - (ii) another written statement is sent under sub-subparagraphs (1)(b)(ii)(A) or (B) or sub-subparagraphs (2)(b)(ii)(A) or (B);
    - (iii) the Agriculture Minister informs the project proponent and Regulator that a written statement will not be sent under sub-subparagraphs (1)(b)(ii)(A) or (B) or sub-subparagraphs (2)(b)(ii)(A) or (B); or
  - (b) otherwise—one of the following applies:
    - (i) more than 30 days have passed since the new ERF regeneration notification or ERF regeneration expansion notification was made;
    - (ii) the Agriculture Minister informs the project proponent and Regulator that a written statement will not be sent under subparagraph (1)(b)(i) or (2)(b)(i).
- (8) In this section:
- adverse impact finding*** means:
- (a) in relation to a new ERF regeneration notification—a finding that if the project went ahead there would, in the opinion of the Minister, be a material adverse impact on agricultural production or the local community in the region where the project would be located; or
  - (b) in relation to an ERF regeneration expansion notification—a finding that if the project went ahead in the additional project area there would, in the opinion of the Minister, be a material adverse impact on agricultural



production or the local community in the region where the additional project area would be located.

**Agriculture Minister** means:

- (a) the Minister administering the *Agricultural and Veterinary Chemicals Act 1994*; or
- (b) an SES employee, or acting SES employee, delegated responsibilities relating to this section by the Minister covered by paragraph (a).

**conservation land** means an area that is owned and managed by the Commonwealth, a State or a Territory government for biodiversity conservation.

**designated email account** means the email address published by the Agriculture Minister on their Department's website for receiving information relevant to this section.

**ERF regeneration expansion notification** means a notification to the designated email account that:

- (a) states that the project proponent is planning to vary the declaration of an existing eligible offsets project to add an area of land to the project area for the project; and
- (b) attaches a geospatial map of the potential additional project area that could be added to the project, and any farms related to that area, in accordance with the CFI Mapping Guidelines; and
- (c) sets out the maximum additional project area size, in hectares, that will be added to the project area of the project; and
- (d) contains the name, address and contact details of the project proponent, including a nomination of an email account for the receipt of all correspondence relating to the notification; and
- (e) lists the known addresses of land within the potential additional project area; and
- (f) includes the following statements in the form specified in any guidelines relating to this section published by Agriculture Minister on their Department's website:
  - (i) a statement setting out the previous five years of agricultural land use history within the potential additional project area, including the area, in hectares, of each land use type;
  - (ii) unless a statutory declaration is provided setting out why an agricultural production history is unavailable to the project proponent—a statement setting out the previous five years of agricultural production history of agricultural commodities within the potential additional project area;
  - (iii) a statement assessing the project's potential impact on agricultural production in the region, that takes into account in any guidelines relating to this section published by the Agriculture Minister on their Department's website; and
- (g) contains information required by any guidelines relating to this section published by the Agriculture Minister on their Department's website; and

- (h) contains any other information relating to the project, such as expected benefits from the project or community support, which the project proponent wishes to include.

**Note:** The potential additional project area could be a precise project area on which the additional project area is to be located or the boundaries of an area the project proponent is looking to define a smaller additional project area in up to the maximum size provided under paragraph (c). Applicants need not have acquired any of the land in the potential additional project area before making an ERF regeneration expansion notification.

***farm*** means:

- (a) any tract of land:
- (i) which is, or has been in the previous 5 years, used for agriculture; and
  - (ii) for which one or more persons hold an estate in fee simple or a lease over the land; or
- (b) multiple tracts of land:
- (i) which are, or have been in the previous 5 years, used for agriculture; and
  - (ii) for which one or more persons hold an estate in fee simple or a lease over each tract of land; and
  - (iii) for which the agricultural activities have contributed to a single business enterprise, regardless of whether those tracts of land are touching.

***incomplete***, in relation to a new ERF regeneration notification or ERF regeneration expansion notification, includes a notification which does not include the information or documents required by the definition of that notification.

***new ERF regeneration notification*** means a notification to the designated email account that:

- (a) states that the project proponent is planning to seek the declaration of a regeneration project as an eligible offsets projects; and
- (b) attaches a geospatial map of the potential project area for the project, and any farms related to the potential project area, in accordance with the CFI Mapping Guidelines; and
- (c) sets out the maximum project area size, in hectares, for all of the proposed project areas of the project; and
- (d) contains the name, address and contact details of the project proponent, including a nomination of an email account for the receipt of all correspondence relating to the notification; and
- (e) lists the known addresses of land within the potential project area; and
- (f) includes the following statements in the form specified in any guidelines relating to this section published by Agriculture Minister on their Department's website:
  - (i) a statement setting out the previous 5 years of agricultural land use history within the potential project area, including the area, in hectares, of each land use type;

- (ii) unless a statutory declaration is provided setting out why an agricultural production history is unavailable to the project proponent—a statement setting out the previous five years of agricultural production history of agricultural commodities within the potential project area;
- (iii) a statement assessing the project’s potential impact on agricultural production in the region, that takes into account in any guidelines relating to this section published by the Agriculture Minister on their Department’s website; and
- (g) contains information required by any guidelines relating to this section published by the Agriculture Minister on their Department’s website; and
- (h) contains any other information relating to the project, such as expected benefits from the project or community support, which the project proponent wishes to include.

Note: The potential project area could be a precise project area on which the project area is to be located or the boundaries of an area the project proponent is looking to define a smaller project area in up to the maximum size provided under paragraph (c). Applicants need not have acquired any of the land in the potential project area before making a new ERF regeneration notification.

***notifiable regeneration project*** means a regeneration project whose proposed project area, at the time of application under section 22 of the Act or subsection 23(3):

- (a) is greater than 15 hectares; and
- (b) if the project area only covers, whether wholly or partly, one farm—covers, with any pre-existing project areas for regeneration projects covering (whether wholly or partially) that farm, more than one third of the area of that farm; and
- (c) if the project area covers, whether wholly or partly, two or more farms—covers, with any pre-existing project areas for regeneration projects covering (whether wholly or partially) any of those farms, more than one third of the area of at least one of those farms; and
- (d) is not wholly, or substantially, exclusive possession native title land, land rights land or conservation land.

## **21 Additionality requirements—requirements in lieu of government program requirement**

- (1) For subparagraph 27(4A)(c)(ii) of the Act, this section sets out requirements in lieu of the government program requirement.

*Project must not include certain activities unless co-located with other activities*

- (2) An offsets project must not include any of the following activities:
  - (a) the operation of an accredited power station within the meaning of the *Renewable Energy (Electricity) Act 2000*, except if:
    - (i) the project is an emissions avoidance project that primarily involves the avoidance of methane emissions; or

- (ii) the power station uses waste coal mine gas that is eligible WCMG, within the meaning of that Act, to generate electricity; or
    - (iii) the power station does not use an eligible energy source, within the meaning of that Act, to generate electricity;
  - (b) the installation of a solar water heater or a small generation unit, within the meaning of the *Renewable Energy (Electricity) Act 2000*, in relation to which a small-scale technology certificate has been, or will be, created in accordance with that Act;
  - (c) a recognised energy saving activity, within the meaning of subsection 127(6) of the *Electricity Supply Act 1995* (NSW), in respect of which an energy savings certificate has been, or will be, created in accordance with that Act;
  - (d) a prescribed activity, within the meaning of the *Victorian Energy Efficiency Target Act 2007* (Vic.), in relation to which an energy efficiency certificate has been, or will be, created in accordance with that Act;
  - (e) an energy efficiency activity, within the meaning of subregulation 23(1) of the *Electricity (General) Regulations 2012* (SA) or subregulation 17(1) of the *Gas Regulations 2012* (SA), that contributes to the achievement of a retailer's target under those Regulations;
  - (f) an activity that contributes to the accrual of an energy credit, within the meaning of subregulation 23(1) of the *Electricity (General) Regulations 2012* (SA) or subregulation 17(1) of the *Gas Regulations 2012* (SA), that may be taken into account in determining whether a retailer's target under those Regulations has been achieved;
  - (g) an activity that contributes to the achievement of a retailer's energy savings obligation under the *Energy Efficiency (Cost of Living) Improvement Act 2012* (ACT).
- (3) For the purposes of subsection (2), an offsets project is taken not to include an activity (the **first activity**) mentioned in that subsection if:
- (a) the first activity is co-located with another activity (the **second activity**); and
  - (b) the second activity is undertaken as part of the project but is not an activity of a kind mentioned in subsection (2); and
  - (c) any carbon abatement that results from the first activity:
    - (i) will not be taken into account in ascertaining the carbon dioxide equivalent net abatement amount for the project under the applicable methodology determination; or
    - (ii) will only have a minor or trivial effect on the carbon dioxide equivalent net abatement amount for the project.

*Project must not include certain activities*

- (4) An offsets project must not include:
- (a) the installation of a device that heats water using solar energy but is not a solar water heater within the meaning of the *Renewable Energy (Electricity) Act 2000* because the device does not satisfy the conditions set

out in subregulation 3A(2) or (3) of the *Renewable Energy (Electricity) Regulations 2001*; or

- (b) the installation of a small generation unit (other than the installation of an integrated photovoltaic luminaire unit), within the meaning of the *Renewable Energy (Electricity) Act 2000*, in relation to which a small-scale technology certificate cannot be created because the requirements set out in regulation 20AC of the *Renewable Energy (Electricity) Regulations 2001* have not been met for the unit.

Note: For the meaning of *integrated photovoltaic luminaire unit*, see subsection 4(1).

*Project must not receive funding under particular programs etc.*

- (5) An offsets project must not have received, or be going to receive in accordance with the terms of a contract or other arrangement that has been entered into, funding by way of a grant or other payment under the program known as the 20 Million Trees Programme, administered by the Commonwealth Government, if the funding relates to activities that are, or are to be, undertaken as part of the project.

## **Division 2A—Variation of declaration of eligible offsets project**

### **Subdivision A—Operation of this Division**

#### **22 Operation of this Division**

For subsections 29(1), 30(1) and 31(2) of the Act, this Division specifies when a declaration made under section 27 of the Act in relation to an offsets project may be varied, and matters relating to how a person applies for a declaration to be varied.

### **Subdivision B—Voluntary variation of declaration of eligible offsets project**

#### **23 Project area (or project areas)**

*When Regulator may vary declaration*

- (1) On receiving an application under subsection (3), the Regulator may vary a declaration under section 27 of the Act in relation to an area-based offsets project, so far as the declaration identifies the project area (or project areas), if the Regulator is satisfied:
  - (a) of the matters mentioned in paragraphs 27(4)(a), (b), (c), (e), (f), (g), (l) and (m) and subsections 27(10) and (11) of the Act in so far as they are relevant to the project and proposed varied project area; and
  - (b) that the project meets the additionality requirements set out in subsection 27(4A) of the Act in relation to the part of the proposed varied project area that is not part of the existing project area or part of the project

- area of another offsets project immediately before the application is made;  
and
- (c) if the declaration relates to a sequestration offsets project—that each person (other than the applicant) who holds an eligible interest in an area of land that is:
- (i) part of the proposed varied project area; and
  - (ii) not part of the current project area for the project; and
  - (iii) not part of another sequestration offsets project that is an unconditional eligible offsets project;
- has consented, in writing, to the making of the application (see subsection (2)); and
- (ca) if the proposed variation would result in an area of land being moved from a 25-year permanence period project to a 100-year permanence period project—that each person (other than the applicant) who holds an eligible interest in an area of land being moved has consented, in writing, to the making of the application (see subsection (2)); and
- (cb) the application would not result in:
- (i) an area of land being moved from an area-based emissions avoidance project to:
    - (A) a sequestration offsets project; or
    - (B) an area-based emissions avoidance project whose crediting period ends after the crediting period for the former area-based emissions avoidance project; or
  - (ii) an area of land being moved from a sequestration offsets project to an area-based emissions avoidance project; and
- (d) if the declaration relates to a sequestration offsets project and the proposed variation would remove from the project area for the project an area of land for which Australian carbon credit units have been issued under Part 2 of the Act in relation to the sequestration of carbon in that land—that the area of land to be removed from the project area becomes, or becomes part of, the project area, or any of the project areas, for another eligible offsets project that is a sequestration offsets project; and
- (e) if the application relates to a project that is a 100-year permanence period project—that the proposed variation would not result in the project area for the project being moved to a 25-year permanence project; and
- (f) if the applicable methodology determination for the project is the original methodology determination for the project because of section 125, 126 or 127 of the Act—that the proposed variation would not result in an area of land that is not part of the existing project area:
- (i) being included in the project area; or
  - (ii) becoming a new project area for the project; and
- (g) if the applicable methodology determination for the project is a methodology determination that was revoked by section 5 of the *Carbon Credits (Carbon Farming Initiative—Superseded Methodology Determinations—Revocation and Transitional Provisions) Instrument 2015* and that continues to apply to the project because of section 6 of that

instrument—that the proposed variation would not result in an area of land that is not part of the existing project area:

- (i) being included in the project area; or
  - (ii) becoming a new project area for the project;
- (h) if the applicable methodology determination for the project is a methodology determination for which the Regulator must not consider applications under section 22 of the Act because of an order under subsection 27A(1) of the Act—that the proposed variation would not result in an area of land that is not part of the existing project area:
- (i) being included in the project area; or
  - (ii) becoming a new project area for the project.
- (2) A consent mentioned in paragraph (1)(c) and (1)(ca):
- (a) may be set out in a registered indigenous land use agreement (if applicable); or
  - (b) if the consent is not set out in a registered indigenous land use agreement—must be in the approved form.

*Application to vary declaration*

- (3) The application must be made by the project proponent for the project and must be in the approved form and be accompanied by the following information or documents:
- (a) the name and contact details of the applicant, and whether the applicant is:
    - (i) the project proponent; or
    - (ii) the nominee of multiple project proponents;
  - (b) the unique project identifier for the project;
  - (c) for each project area of the project being varied:
    - (i) a description of its geographical location; and
    - (ii) its street address; and
    - (iii) its lot numbers and land title details; and
    - (iv) its local government area;
  - (d) the name and date of any natural resource management plan covering the proposed varied project area and details about whether the project is consistent with the plan despite the proposed variation to the project area;
  - (e) information that shows that the applicant has the legal right to carry out the project in the proposed varied project area;
  - (f) details of how the project, if conducted on the proposed varied project area, meets the requirements of the methodology determination that the project is covered by;
  - (g) details of how the project meets the additionality requirements set out in subsection 27(4A) of the Act in relation to the part of the proposed varied project area mentioned in paragraph (1)(b);
  - (h) a statement that all requirements mentioned in subsections 27(4) to (11) of the Act that are relevant to the project and the proposed varied project area have been met;

- (i) if one or more regulatory approvals are required for the project—for each approval:
  - (i) a description of the approval, including the name of the regulatory authority responsible for issuing the approval; and
  - (ii) whether or not the approval has been issued; and
  - (iii) the applicant's authorisation that the Regulator may contact the regulatory authority to discuss whether the approval has been issued; and
  - (iv) if approval has not been issued, details of what actions the applicant has taken, or is taking, to obtain the approval; and
  - (v) if the approval has been issued, any reference number or other identifier for the approval;
- (j) a geospatial map of the amended project area in accordance with the CFI Mapping Guidelines;
- (k) if the consent of each person who holds an eligible interest in the varied project area is required to be obtained—a statement that the relevant consents have been obtained;
- (l) if, as a result of the variation, subsection 57(1) of the Act applies to the project—an estimate of how many Australian carbon credit units would have been issued under Part 2 of the Act in relation to any sequestration occurring on the relevant area between:
  - (i) the end of the last reporting period for the project; and
  - (ii) the time when the relevant area ceases to be part of the project area;
- (m) a signed declaration by the applicant that the information included in, and the information and any documents accompanying the application:
  - (i) meets the requirements in this subsection; and
  - (ii) is accurate;
- (n) if section 20B is relevant to the application—the ERF plantation expansion notification made in relation to the application and any information sent in connection with that application to the designated email account (within the meaning of that section);
- (o) if an area of land is to be added to the project area of a sequestration offsets project—an explanation of the steps intended to be undertaken to ensure carbon remains sequestered in the additional project area for the permanence obligation period for the project;
- (p) if an area of land is to be added to the project area of a savanna emissions avoidance project or a savanna sequestration project—an explanation of:
  - (i) whether native title has been determined or claimed in relation to the additional project area for the project; and
  - (ii) whether the project activities are, or are intended to be, covered by an indigenous land use agreement; and
  - (iii) whether the applicant has informed the relevant State or Territory Government about inclusion of the additional project area in the project; and



- (iv) when permits may be required under the applicable bushfire legislation to carry out the project on the additional project area.

Note: For the meaning of *relevant area*, see subsection 4(1).

- (4) For paragraph (3)(1), the estimate must only be provided for the transferor offsets project.
- (4A) If the project is a regeneration project whose proposed project area will exceed 15 hectares after the variation, the application must also include:
- (a) if the project is a not notifiable regeneration project (within the meaning of section 20C)—a geospatial map of any farms (within the meaning of section 20C) that are wholly or partly within the proposed project area of the project; and
  - (b) if the project is a notifiable regeneration project (within the meaning of section 20C)—the ERF regeneration expansion notification made in relation to the application.

*Timing*

- (5) The Regulator must take all reasonable steps to ensure that a decision is made on the application:
- (a) if the Regulator requested the applicant to give further information under section 26 in relation to the application—within 90 days after the applicant gave the Regulator the information; or
  - (b) otherwise—within 90 days after the application was made.

*Notification*

- (6) If the Regulator varies the declaration, the Regulator must, as soon as practicable after varying the declaration, give a copy of the variation to:
- (a) the applicant; and
  - (b) if the varied declaration relates to a sequestration offsets project—the relevant land registration official for the project.

*Refusal*

- (7) If the Regulator refuses to vary the declaration, the Regulator must give the applicant written notice of the decision and the reasons for the decision.

*When variation takes effect*

- (8) A variation to the declaration takes effect so that:
- (a) to the extent that effect of the variation is for an area of land to be removed from a project without becoming part of the project area, or any of the project areas, of another eligible offsets project—the declaration is taken to be varied to remove the area from the start of the current reporting period for the project; and
  - (b) if an effect of the variation is for a project area to be subdivided into two or more project areas covering the land within the original project area—the

declaration is taken to be varied to apply the subdivided project areas from the start of the current reporting period for the project; and

- (c) otherwise—the varied project area applies from the day on which the next reporting period for the project begins.

*Meaning of unconditional eligible offset project*

- (9) In this section:

***unconditional eligible offsets project*** means an eligible offsets project that:

- (a) the Regulator has not specified a condition for in the declaration under subsection 28A(2) of the Act; or  
(b) had a condition in the declaration under subsection 28A(2) of the Act removed under subsection 25(1).

## 24 Project proponent

*When Regulator must vary declaration*

- (1) On receiving an application under subsection (2), the Regulator may vary a declaration made under section 27 of the Act in relation to an offsets project, so far as the declaration identifies the project proponent for the project, if the Regulator is satisfied that:
- (a) any person being identified as project proponent on the declaration is a project proponent of the project within the meaning of the Act; and  
(b) if a person is being identified as project proponent on the declaration as a result of the variation (a ***new project proponent***)—that person passes the fit and proper person test; and  
(c) if a person identified on the declaration is no longer a project proponent for the project—that person is being removed from the declaration; and  
(d) if the applicant is required to give security to the Commonwealth under subsection (3)—the applicant has given the required security to the Commonwealth.

*Application to vary declaration*

- (2) The application must be made by a person satisfying subsection (2A) and must be in the approved form and be accompanied by the following information or documents:
- (a) the name and contact details of the applicant, which paragraph of subsection (2A) applies to the applicant and whether the applicant is:  
(i) a project proponent; or  
(ii) the nominee of multiple project proponents;  
(b) the unique project identifier for the project;  
(c) the name and contact details of any new project proponent;  
(d) if applicable, the nominee of the project proponents;

- (e) if there is to be a new project proponent—the information and documents mentioned in Subdivision C of Division 1 of Part 3 (which deals with establishing the applicant’s identity) that would be required to accompany the application if the new project proponent was applying for a declaration of an offsets project as an eligible offsets project;
- (f) if there is to be a new project proponent—documents that show that the new project proponent has agreed to become, and has become, the project proponent of the project;
- (g) whether any person identified on the declaration as a project proponent for the project is no longer a project proponent for the project;
- (h) any information or documents necessary to substantiate that the requirements of subsection (2A) are met in relation to the application;
- (i) a signed declaration by the applicant that the information included in, and the information and any documents accompanying the application:
  - (i) meets the requirements in this subsection; and
  - (ii) is accurate.

(2A) A person may apply under subsection (1) if they are:

- (a) a project proponent for the project identified on the declaration as the project proponent for the project; or
- (b) if the person under paragraph (a) is deceased or is incapacitated—that person’s legal personal representative making an application on behalf of that person; or
- (c) a person who:
  - (i) is a project proponent for the project; and
  - (ii) is applying to be identified as a new project proponent for the project on the declaration; and
  - (iii) has the written consent of a person identified on the declaration as the project proponent for the project; or
- (d) if an application has been made under section 29 or 30 to voluntarily revoke the declaration of the eligible offsets project—a person who is:
  - (i) a project proponent for the project; and
  - (ii) applying to be identified as a new project proponent for the project on the declaration; or
- (e) if the person identified on the declaration as the project proponent for the project:
  - (i) no longer exists; or
  - (ii) has, in the opinion of the Regulator, abandoned the eligible offsets project; or
  - (iii) is required by a court order to transfer, or arrange the transfer of, the project to the applicant; or
  - (iv) has been determined by the Regulator, in relation to an application under the Act, not to be a fit and proper person;a person who:
  - (v) is a project proponent for the project; and

- (vi) is applying to be identified as a new project proponent for the project on the declaration; or
- (f) if the Regulator is satisfied:
  - (i) that the persons identified on the declaration as the project proponents for the project are either an individual who is an insolvent under administration or a body corporate that is a Chapter 5 body corporate; and
  - (ii) that identifying the applicant as project proponent is appropriate having regard to:
    - (A) whether the applicant or the current landholder for the project caused, or materially contributed to, the circumstance in subparagraph (i); and
    - (B) the actions of a person identified as the project proponent on the declaration which caused the circumstance in (i); and
    - (C) if the project is an area-based offsets project—any impacts of the decision for native title holders of all or part of the project area; and
    - (D) any other matter the Regulator considers relevant;a person who:
  - (iii) is a project proponent for the project; and
  - (iv) is applying to be identified as a new project proponent for the project on the declaration; or
- (g) if the Regulator:
  - (i) has issued a notice under section 33 of an intention to revoke the project; and
  - (ii) is satisfied that, unless transferred under this section, the project should be revoked; and
  - (iii) is satisfied that identifying the applicant as project proponent is appropriate having regard to:
    - (A) whether the applicant or the current landholder for the project caused, or materially contributed to, the need for the Regulator to revoke the project; and
    - (B) the actions of a person identified as the project proponent on the declaration which caused the issuance of the notice under section 33; and
    - (C) if the project is an area-based offsets project—any impacts of the decision for native title holders of all or part of the project area; and
    - (D) any other matter the Regulator considers relevant;a person who:
  - (iv) is a project proponent for the project; and
  - (v) is applying to be identified as a new project proponent for the project on the declaration; or
- (h) if:

- (i) the project was declared an eligible offsets project on or after 1 July 2020; and
  - (ii) the Regulator is satisfied that no person identified on the declaration as the project proponent for the project is a project proponent; and
  - (iii) the Regulator is satisfied that identifying the applicant as project proponent is appropriate having regard to:
    - (A) whether the applicant or the current landholder for the project caused, or materially contributed to, the identified project proponents no longer being a project proponent; and
    - (B) the actions of the persons identified as a project proponent on the declaration which caused them to no longer be a project proponent for the project; and
    - (C) if the project is an area-based offsets project—any impacts of the decision for native title holders of all or part of the project area; and
    - (D) any other matter the Regulator considers relevant;
- a person who:
- (iv) is a project proponent for the project; and
  - (v) is applying to be identified as a new project proponent for the project on the declaration.

Note: The new project proponent must also satisfy the fit and proper person requirements under paragraph (1)(b) and the requirements of subparagraphs (2A)(f)(ii), (g)(iii) and (h)(iii) are not intended to limit the matters considered in this assessment or the discretion provided in subsection (1).

- (2B) If the project is an area-based offsets project for which a registered native title body corporate holds an eligible interest in some or all of the project area—before making a decision under subsection (1) the Regulator must:
  - (a) take all reasonable steps to notify the registered native title body corporate of the application; and
  - (b) invite the registered native title body corporate to make a submission about the application by a date at least 28 days after the date of the notice.
- (2C) If an application under subsection (2) is made by a person under paragraph (2A)(d), (e), (f), (g) or (h), the Regulator must take all reasonable steps to consult, in accordance with subsection (2D), any persons identified on the declaration as the project proponent for the project before making a decision under subsection (1).
- (2D) For subsection (2C), the Regulator must:
  - (a) give each person identified on the declaration as the project proponent for the project written notice of the proposed decision under subsection (1); and
  - (b) invite the person to make a submission about the proposed decision by a date at least 28 days after the date of the notice.

*Regulator may require applicant to give security*

- (3) If the project is a sequestration offsets project, the Regulator may require the applicant to give security to the Commonwealth in relation to the fulfilment by the applicant of any requirements to relinquish Australian carbon credit units that may be imposed on the applicant under Part 7 of the Act in relation to the project.

*Timing*

- (4) The Regulator must take all reasonable steps to ensure that a decision is made on the application by the later of the following:
- (a) 90 days after the application was made;
  - (b) if the Regulator requested the applicant to give further information under section 26 in relation to the application—90 days after the applicant gave the Regulator the information;
  - (c) if a registered native title body corporate is notified under subsection (2B)—90 days after the date included in the notice under paragraph (2B)(b);
  - (d) if a registered native title body corporate notified under subsection (2B) objects to the variation—90 days after the objection is made;
  - (e) if a person consulted under subsection (2C) objects to the variation—90 days after the objection is made.

*Notification*

- (5) If the Regulator varies the declaration, the Regulator must, as soon as practicable after varying the declaration, give a copy of the variation to:
- (a) the applicant; and
  - (b) if the varied declaration relates to a sequestration offsets project—the relevant land registration official for the project; and
  - (c) if a person is being removed from the declaration—that person.

*Refusal*

- (6) If the Regulator refuses to vary the declaration, the Regulator must give the applicant written notice of the decision and the reasons for the decision.

*When variation takes effect*

- (7) A variation to the declaration takes effect:
- (a) when the variation to the declaration is made; or
  - (b) on an earlier day, after the day the declaration was made, if:
    - (i) the Regulator makes a written determination specifying the day; and
    - (ii) the person who made the application for the variation consents to the determination of the earlier day; and

- (iii) if a person is being removed from the declaration—the day is no earlier than the day that person ceased to be a project proponent for the project.

## 25 Removal of condition

### *When Regulator must remove conditions from declaration*

- (1) The Regulator must vary a declaration made under section 27 of the Act in relation to an offsets project to remove a condition mentioned in subsection 28(2) or 28A(2) of the Act if:
  - (a) the Regulator receives an application under subsection (2); and
  - (b) the Regulator is satisfied that the condition has been met.

### *Application to vary declaration*

- (2) The application must be made by the project proponent for the project and must be in the approved form and be accompanied by the following information or documents:
  - (a) the name and contact details of the applicant and whether the applicant is:
    - (i) the project proponent; or
    - (ii) the nominee of multiple project proponents;
  - (b) the unique project identifier for the project;
  - (c) if the declaration is subject to the condition mentioned in subsection 28(2) of the Act—a statement that all regulatory approvals for the project have been obtained and for each regulatory approval:
    - (i) a description of the approval, including the name of the regulatory authority responsible for issuing the approval and any reference numbers or other identifies for the approval; and
    - (ii) if requested by the Regulator, a certified copy of the approval; and
    - (iii) the applicant's authorisation that the Regulator may contact all relevant regulatory authorities for the project to discuss whether regulatory approvals have been obtained;
  - (d) if the declaration is subject to the condition mentioned in subsection 28A(2) of the Act—a statement that written consent of each relevant interest-holder has been obtained;
  - (e) a signed declaration by the applicant that the information included in, and the information and any documents accompanying the application:
    - (i) meets the requirements in this subsection; and
    - (ii) is accurate.

### *Timing*

- (3) The Regulator must take all reasonable steps to ensure that a decision is made on the application:

- (a) if the Regulator requested the applicant to give further information under section 26 in relation to the application—within 90 days after the applicant gave the Regulator the information; or
- (b) otherwise—within 90 days after the application was made.

*Notification*

- (4) If the Regulator varies the declaration, the Regulator must, as soon as practicable after varying the declaration, give a copy of the variation to:
  - (a) the applicant; and
  - (b) if the varied declaration relates to a sequestration offsets project—the relevant land registration official for the project.

*Refusal*

- (5) If the Regulator refuses to vary the declaration, the Regulator must give the applicant written notice of the decision and the reasons for the decision.

*When variation takes effect*

- (6) A variation to the declaration takes effect when the variation is made.

## **26 Regulator may request further information**

- (1) The Regulator may, by written notice, require a project proponent that has applied under section 23, 24 or 25 for the variation of a declaration to give to the Regulator further information in relation to the application, within the period specified in the notice.
- (2) If the project proponent breaches the requirement, the Regulator may, by written notice, inform the project proponent that the Regulator:
  - (a) refuses to consider the application; or
  - (b) refuses to take any action, or any further action, in relation to the application.

## **27 Applicant may withdraw application**

- (1) A project proponent that has applied under section 23, 24 or 25 for the variation of a declaration may, by written notice given to the Regulator, withdraw the application at any time before the Regulator makes a decision on the application.
- (2) The withdrawal does not prevent the project proponent from making a fresh application.



## **Division 2B—Revocation of declaration of eligible offsets project**

### **Subdivision A—Operation of this Division**

#### **28 Operation of this Division**

For subsections 32(1), 33(1), 34(1), 35(1), 36(1), 37(1), 38(1) and 139(1) of the Act, this Division specifies when a declaration made under section 27 of the Act in relation to an offsets project may be voluntarily or unilaterally revoked, and matters relating to how a person applies for a declaration to be revoked.

### **Subdivision B—Voluntary revocation of declaration of eligible offsets project**

#### **29 Voluntary revocation of declaration of eligible offsets project—units issued**

##### *When Regulator must revoke declaration*

- (1) On receiving an application under subsection (2), the Regulator must revoke a declaration made under section 27 of the Act in relation to an offsets project to which one or more Australian carbon credit units have been issued in relation to the project if:
  - (a) the Regulator is satisfied that Australian carbon credit units have been issued in relation to the project in accordance with Part 2 of the Act; and
  - (b) if the project is a sequestration offsets project—the Regulator is satisfied that:
    - (i) the applicant has, before making the application, voluntarily relinquished Australian carbon credit units equal to the net total number of Australian carbon credit units issued in relation to the project in accordance with Part 2 of the Act; and
    - (ii) if the Australian carbon credit units voluntarily relinquished by the applicant included non-Kyoto Australian carbon units—the number of non-Kyoto Australian carbon credit units relinquished does not exceed the number of non-Kyoto Australian carbon credit units issued in relation to the project in accordance with Part 2 of the Act; and
  - (c) before the Regulator revokes the declaration, the applicant is not removed from being identified on the declaration as the project proponent for the project under section 24.

##### *Application to revoke declaration*

- (2) The application must be made by the project proponent for the project and must be in the approved form and be accompanied by the following information or documents:
  - (a) the name and contact details of the applicant and whether the applicant is:
    - (i) the project proponent; or
    - (ii) the nominee of multiple project proponents;

- (b) the unique project identifier for the project;
  - (c) evidence that the project has been issued with one or more certificates of entitlement;
  - (d) details of the type and number of Australian carbon credit units issued for the project;
  - (e) if the project is a sequestration offsets project—evidence of the relevant matters mentioned in subparagraph (1)(b)(i) and (ii);
  - (ea) an explanation of whether any other person is likely to consider themselves eligible to be the project proponent for the project and the contact details of any such persons;
  - (f) a signed declaration by the applicant that the information included in, and the information and any documents accompanying the application:
    - (i) meets the requirements in this subsection; and
    - (ii) is accurate.
- (2A) If the Regulator considers that the landholder or another person may want to be considered a project proponent for the project, the Regulator must take reasonable steps to inform that person of the application.

*Timing*

- (3) The Regulator must take all reasonable steps to ensure that a decision is made on the application:
- (a) if the Regulator requested the applicant to give further information under section 31 in relation to the application—within 90 days after the applicant gave the Regulator the information; or
  - (b) otherwise—within 90 days after the application was made.
- (3A) However, the Regulator may delay making a decision on the application if another person has made, or is considering making, an application under section 24.

*Notification*

- (4) If the Regulator revokes the declaration, the Regulator must, as soon as practicable after revoking the declaration, give a copy of the revocation to:
- (a) the applicant; and
  - (b) if the revoked declaration related to a sequestration offsets project—the relevant land registration official for the project.

*Refusal*

- (5) If the Regulator refuses to revoke the declaration, the Regulator must give the applicant written notice of the decision and the reasons for the decision.

### **30 Voluntary revocation of declaration of eligible offsets project—no units issued**

#### *When Regulator must revoke declaration*

- (1) On receiving an application under subsection (2), the Regulator must revoke a declaration made under section 27 of the Act in relation to an offsets project to which no Australian carbon credit units have been issued if:
  - (a) the Regulator is satisfied that no Australian carbon credit units have been issued in relation to the project; and
  - (b) before the Regulator revokes the declaration the applicant is not removed from being identified on the declaration as the project proponent for the project under section 24.

#### *Application to revoke declaration*

- (2) The application must be made by the project proponent for the project and must be in the approved form and be accompanied by the following information or documents:
  - (a) the name and contact details of the applicant and whether the applicant is:
    - (i) the project proponent; or
    - (ii) the nominee of multiple project proponents;
  - (b) the unique project identifier for the project;
  - (c) a statement that no Australian carbon credit units have been issued for the project;
  - (ca) an explanation of whether any other person is likely to consider themselves eligible to be the project proponent for the project and the contact details of any such persons;
  - (d) a signed declaration by the applicant that the information included in, and the information and any documents accompanying the application:
    - (i) meets the requirements in this subsection; and
    - (ii) is accurate.
- (2A) If the Regulator considers that the landholder or another person may want to be considered a project proponent for the project, the Regulator must take reasonable steps to inform that person of the application.

#### *Timing*

- (3) The Regulator must take all reasonable steps to ensure that a decision is made on the application:
  - (a) if the Regulator requested the applicant to give further information under section 31 in relation to the application—within 90 days after the applicant gave the Regulator the information; or
  - (b) otherwise—within 90 days after the application was made.

- (3A) However, the Regulator may delay making a decision on the application if another person has made, or is considering making, an application under section 24.

*Notification*

- (4) If the Regulator revokes the declaration, the Regulator must, as soon as practicable after revoking the declaration, give a copy of the revocation to:
- (a) the applicant; and
  - (b) if the revoked declaration related to a sequestration offsets project—the relevant land registration official for the project.

*Refusal*

- (5) If the Regulator refuses to revoke the declaration, the Regulator must give the applicant written notice of the decision and the reasons for the decision.

**30A Linked applications for revocation in relation to savanna emissions avoidance project and declaration of new savanna sequestration project**

Note: This provision is part of a mechanism that enables the project proponent of a savanna emissions avoidance project, in effect, to transfer the project to a determination that also provides credits for sequestration. The section 27 declaration for the original project is revoked, and a new section 27 declaration is made for the project under the sequestration determination.

*Application of this section*

- (1) This section applies if the Regulator receives a request to act in accordance with this section, accompanied by:
- (a) an application in accordance with subsection (4) to revoke the section 27 declaration in relation to a savanna emissions avoidance project (the *former project*); and
  - (b) an application under section 22 of the Act for a savanna sequestration project with one or more project areas that are identical to the project areas under the former project (the *new project*); and
  - (c) a statement that the applicant wishes the declaration in relation to the former project to be revoked if, and only if, the new project is to be declared an eligible offsets project; and
  - (d) evidence that all persons who hold an eligible interest in the project area of the new project have consented to the making of the application under section 22 of the Act for that new project.

*How the Regulator is to act*

- (2) The Regulator must proceed sequentially as follows:
- (a) wait until a time when all the following conditions are fulfilled:
    - (i) the project proponent has submitted an offsets report for the former project that covers the most recent full calendar year and all project areas for the project;

- (ii) any certificates of entitlement arising from that report have been issued;
- (iii) the relevant Australian carbon credit units have been issued to the holder of the certificate of entitlement (if any);
- (iv) there is sufficient time remaining in the calendar year for the new project to be declared an eligible offsets project before 1 December of that year and the crediting period for the new project to begin;

Note: If, by the time the carbon credits have been issued in relation to an offsets report, there is not sufficient time for the new project to be declared eligible before 1 December of a calendar year, the Regulator must wait until the calendar year has been completed and an offsets report in relation to it submitted before reconsidering whether the conditions are fulfilled. It is not possible for such new projects to defer the start of their crediting period past the calendar year in which they are declared.

- (b) decide whether the new project should be declared an eligible offsets project;
- (c) if the decision is to declare the new project an eligible offsets project:
  - (i) revoke the section 27 declaration for the former project; and
  - (ii) immediately afterwards, make the section 27 declaration for the new project.

(3) If the Regulator:

- (a) for the purposes of paragraph (2)(b), decides that the new project should not be declared an eligible offsets project; or
  - (b) cannot proceed sequentially under subsection (2) within 12 months;
- the application for revocation in relation to the former project is taken to be withdrawn.

*Application to revoke declaration in relation to former project*

- (4) The application for revocation in relation to the former project must be in the approved form and must be accompanied by the following information or documents:
- (a) the name and contact details of the applicant and whether the applicant is:
    - (i) the project proponent; or
    - (ii) the nominee of multiple project proponents;
  - (b) the unique project identifier for the former project;
  - (c) a signed declaration by the applicant that the information included in, and the information and any documents accompanying, the application:
    - (i) meets the requirements in this subsection; and
    - (ii) is accurate.

*When the revocation takes effect*

- (5) A revocation under subparagraph (2)(c)(i) takes effect when it is made.

*Notification*

- (6) If the Regulator makes such a revocation, the Regulator must give a copy of the revocation to the applicant with the section 27 declaration in relation to the new project.

**30B Linked applications for removal of project area from a savanna emissions avoidance project and declaration of new savanna sequestration project**

Note: This provision is part of a mechanism that enables the project proponent of a savanna emissions avoidance project, in effect, to transfer a project area for the project to a determination that also provides credits for sequestration. The section 27 declaration for the original project is varied to remove the project area, and a new section 27 declaration is made for the project area under the sequestration determination.

*Application of this section*

- (1) This section applies if the Regulator receives a request to act in accordance with this section, accompanied by:
  - (a) an application in accordance with subsection (5) to vary the section 27 declaration in relation to a savanna emissions avoidance project (the **original project**) to remove one or more project areas from that project; and
  - (b) an application under section 22 of the Act for a savanna sequestration project with one or more project areas that are identical to the project area or areas to be removed from the original project (the **new project**) assuming the project areas are varied in accordance with any request under subsection (2); and
  - (c) a statement that the applicant wishes the declaration in relation to the original project to be varied if, and only if, the new project is to be declared an eligible offsets project; and
  - (d) evidence that all persons who hold an eligible interest in the project area of the new project have consented to the making of the application under section 22 of the Act for that new project.
- (2) The application in accordance with subsection (5) to vary the section 27 declaration may include a request to subdivide project areas of the original project or remove part of a project area from the project if such a request is consistent with the applicable methodology determination for the original project.

*How the Regulator is to act*

- (3) The Regulator must proceed sequentially as follows:
  - (a) wait until a time when all the following conditions are fulfilled:
    - (i) the project proponent has submitted an offsets report for the original project that covers the most recent full calendar year and the project areas proposed to be removed from the project;

- (ii) any certificates of entitlement arising from that report have been issued;
- (iii) the relevant Australian carbon credit units have been issued to the holder of the certificate of entitlement (if any);
- (iv) there is sufficient time remaining in the calendar year for the new project to be declared an eligible offsets project before 1 December of that year and the crediting period for the new project to begin;

Note: If, by the time the carbon credits have been issued in relation to an offsets report, there is not sufficient time for the new project to be declared eligible before 1 December of a calendar year, the Regulator must wait until the calendar year has been completed and an offsets report in relation to it submitted before reconsidering whether the conditions are fulfilled. It is not possible for such new projects to defer the start of their crediting period past the calendar year in which they are declared.

- (b) decide whether the new project should be declared an eligible offsets project;
- (c) if the decision is to declare the new project an eligible offsets project:
  - (i) vary the section 27 declaration for the original project in accordance with any requests under subsection (2) that are consistent with the applicable methodology determination for the original project; and
  - (ii) vary the section 27 declaration for the original project to remove the project areas the subject of the application under subsection (5); and
  - (iii) immediately afterwards, make the section 27 declaration for the new project.

(4) If the Regulator:

- (a) for the purposes of paragraph (3)(b), decides that the new project should not be declared an eligible offsets project; or
- (b) cannot proceed sequentially under subsection (3) within 12 months;

the application for variation of the project area in relation to the original project is taken to be withdrawn.

*Application to revoke declaration in relation to original project*

- (5) The application to vary the declaration of the original project to remove one or more project areas must be in the approved form and must be accompanied by the following information or documents:
  - (a) the name and contact details of the applicant and whether the applicant is:
    - (i) the project proponent; or
    - (ii) the nominee of multiple project proponents;
  - (b) the unique project identifier for the original project;
  - (c) a geospatial map of the amended project areas for the original project and project areas for the new project in accordance with the CFI Mapping Guidelines;
  - (d) an explanation of how any requests under subsection (2) are consistent with the applicable methodology determination for the original project;
  - (e) a signed declaration by the applicant that the information included in, and the information and any documents accompanying, the application:

- (i) meets the requirements in this subsection; and
- (ii) is accurate.

*When the revocation takes effect*

- (6) A variation under subparagraph (3)(c)(i) or (ii) takes effect when it is made.

*Notification*

- (7) If the Regulator makes such a variation, the Regulator must give a copy of the varied declaration to the applicant with the section 27 declaration in relation to the new project.

### **30C When units are taken to be issued in relation to a project**

For subsections 29(1) and 30(1), a project for which one or more Australian carbon credit units have been issued in accordance with Part 2 of the Act includes an eligible offsets project that has a net abatement amount greater than zero.

### **31 Regulator may request further information**

- (1) The Regulator may, by written notice, require a project proponent that has applied under section 29, 30 or 30A for the revocation of a declaration, or section 30B for the variation of a declaration, to give to the Regulator further information in relation to the application, within the period specified in the notice.
- (2) If the project proponent breaches the requirement, the Regulator may, by written notice, inform the project proponent that the Regulator:
  - (a) refuses to consider the application; or
  - (b) refuses to take any action, or any further action, in relation to the application.

### **Subdivision C—Unilateral revocation of declaration of eligible offsets project**

### **32 Unilateral revocation of declaration of eligible offsets project**

*When declaration may be unilaterally revoked*

- (1) The Regulator may revoke a declaration made under section 27 of the Act in relation to an offsets project for a reason mentioned in column 1 of the following table if the requirements mentioned in column 2 of the item have been met.



<b>Reason and requirements to unilaterally revoke declaration</b>		
<b>Item</b>	<b>Column 1 Reason</b>	<b>Column 2 Requirements</b>
1	Regulatory approvals for the project have not been obtained	All of the following must be met: (a) the declaration is subject to the condition mentioned in subsection 28(2) of the Act (which deals with regulatory approvals being obtained for the project before the end of the first reporting period); (b) the Regulator is satisfied that the condition has not been met; (c) the Regulator has consulted the project proponent for the project in accordance with section 33; (d) the 28-day consultation period under section 33 has passed.
2	Consent from eligible interest holders has not been obtained	All of the following must be met: (a) the declaration is subject to the condition mentioned in subsection 28A(2) of the Act (which deals with obtaining the consent of each person who holds an interest in the project area before the end of the first reporting period); (b) the Regulator is satisfied that the condition has not been met; (c) the Regulator has consulted the project proponent for the project in accordance with section 33; (d) the 28-day consultation period under section 33 has passed.
3	The project does not meet the requirements set out in paragraphs 27(4)(a) to (c) and (l) of the Act	All of the following must be met: (a) the Regulator is satisfied that the project does not meet the requirements mentioned in paragraphs 27(4)(a) to (c) and (l) of the Act; (b) the Regulator has consulted the project proponent for the project in accordance with section 33; (c) the 28-day consultation period under section 33 has passed.
4	The project proponent for the project ceases to pass the fit and proper person test	All of the following must be met: (a) the project proponent for the project ceases to pass the fit and proper person test; (b) 90 days pass after the cessation, and the person who, at the end of that 90-day period, is the project proponent for the project does not pass the fit and proper person test; (c) the Regulator has consulted the project proponent for the project in accordance with section 33; (d) the 28-day consultation period under section 33 has passed.
5	The person responsible for carrying out the project ceases to be the project proponent for the project	All of the following must be met: (a) the person who is responsible for carrying out the project ceases to be the project proponent for the project; (b) 90 days pass after the cessation, and the person who, at the end of that 90-day period, is responsible for carrying out the project is not: (i) the project proponent for the project; and

<b>Reason and requirements to unilaterally revoke declaration</b>		
<b>Item</b>	<b>Column 1 Reason</b>	<b>Column 2 Requirements</b>
		(ii) a person who passes the fit and proper person test; (c) the Regulator has taken all reasonable steps to consult the project proponent for the project in accordance with section 33; (d) the 28-day consultation period under section 33 has passed.
6	False or misleading information was provided to the Regulator in relation to the project	All of the following must be met: (a) the information was given by a person to the Regulator in connection with the project; (b) the information was: (i) contained in an application, or given in connection with an application, under the Act or this Rule; or (ii) contained in an offsets report; or (iii) contained in a notification given under Part 6 of the Act; (c) the information was false or misleading in a material particular; (d) the Regulator has consulted the project proponent for the project in accordance with section 33; (e) the 28-day consultation period under section 33 has passed.
7	Multiple project proponents fail to nominate a nominee in relation to the project	All of the following must be met: (a) there are 2 or more project proponents (the <b>multiple project proponents</b> ) for the offsets project; (b) the multiple project proponents have nominated a person under subsection 136(2) of the Act; (c) the nomination ceases to be in force; (d) 90 days pass after the cessation, and no new nomination under subsection 136(2) is made by the multiple project proponents; (e) the Regulator has consulted the multiple project proponents for the project in accordance with section 33; (f) the 28-day consultation period under section 33 passed.

*Notification of revocation*

- (2) If the Regulator revokes a declaration under subsection (1), the Regulator must, as soon as practicable after revoking the declaration, give a copy of the revocation to:
- (a) the project proponent for the project; and
  - (b) if the revoked declaration related to a sequestration offsets project—the relevant land registration official for the project.

### **33 Consultation**

- (1) Before deciding to revoke a declaration made under section 27 of the Act in relation to an offsets project for a reason mentioned in column 1 of the table in subsection 32(1), the Regulator must:
  - (a) give each project proponent for the project written notice of the proposed revocation; and
  - (b) invite the proponent to make a submission about the proposed revocation within 28 days after the date of the notice; and
  - (c) if the Regulator considers that the landholder or another person may want to be considered a project proponent for the project, the Regulator must take reasonable steps to inform that person of the proposed revocation.
- (2) For subsection 32(1), the *28-day consultation period* is the period of 28 days after the notice is given.

## **Division 2C—Eligible interest in an area of land**

### **34 Land transferable to an Aboriginal land council**

For subsections 44(5A) and 45(5A) of the Act, an Aboriginal land council holds an eligible interest in an area of land if:

- (a) under a law of the Commonwealth, a State or a Territory, the Aboriginal land council makes a claim for the area of land to become land rights land; and
- (b) the Minister who administers the law makes a decision that the land become land rights land.

## **Division 3—Types of projects**

### **50 Area-based emissions avoidance projects**

For subsection 53A(1) of the Act, an emissions avoidance offsets project of any of the following kinds is an area-based emissions avoidance project:

- (a) a project to avoid emissions of greenhouse gases from the burning of savannas;
- (b) a project in relation to which the *Carbon Credits (Carbon Farming Initiative—Reducing Greenhouse Gas Emissions from Fertiliser in Irrigated Cotton) Methodology Determination 2015* is the applicable methodology determination.

## **Division 4—Restructure of eligible offsets projects**

### **51 Operation of this Division**

For subsection 57(2) of the Act, this Division makes provision for adjustments relating to restructured eligible offsets projects.

### **52 Adjusting the net total number of Australian carbon credit units**

*Determination relating to transferor offsets projects or transferee offsets projects*

- (1) The Regulator may determine that, whenever it is necessary to work out the net total number of Australian carbon credit units issued in relation to the transferor offsets project, the Act has effect, in relation to the transferor offsets project, as if the net total number of Australian carbon credit units issued in relation to the project in accordance with Part 2 of the Act were decreased by the number specified in the determination.
- (2) The Regulator may determine that, whenever it is necessary to work out the net total number of Australian carbon credit units issued in relation to a transferee offsets project, the Act has effect, in relation to the transferee offsets project, as if the net total number of Australian carbon credit units issued in relation to the project in accordance with Part 2 of the Act were increased by the number specified in the determination.
- (3) If the Regulator has made a determination under subsection (1) or (2), the Act has effect in accordance with the determination.

*Adjusting for reporting periods for which Australian carbon credit units have not been claimed*

- (4) If:
  - (a) a project proponent for a transferor offsets project has given the Regulator an offsets report for the project for a reporting period; and

- (b) the offsets report was given to the Regulator before the relevant area ceased to be, or ceased to be part of, the transferor offsets project; and
- (c) the project proponent did not apply to the Regulator for the issue of a certificate of entitlement for the project for the reporting period;

the Regulator must, when making a determination under subsection (1) or (2), take into account the Australian carbon credit units that would have been issued under Part 2 of the Act for the reporting period had the proponent applied for, and been issued, a certificate of entitlement for the project for the reporting period.

Note: For the meaning of *relevant area*, see subsection 4(1).

*Adjusting for incomplete reporting periods*

- (5) The Regulator must, when making a determination under subsection (1) or (2), take into account the Australian carbon credit units that would have been issued for the sequestration of carbon in the relevant carbon pool on the relevant area during the period:
  - (a) beginning on the day immediately following the end of the last reporting period; and
  - (b) ending at the time the relevant area ceases to be part of the transferor offsets project.

Note: The term *relevant carbon pool* is defined in section 5 of the Act.

*Varying a determination*

- (6) The Regulator may vary a determination made under subsection (1) or (2) (the **original determination**) by remaking the determination if the Regulator receives:
  - (a) in a case in which the Regulator took account of the matters mentioned in subsection (4) when making the original determination—an application for a certificate of entitlement for the relevant period; or
  - (b) in a case in which the Regulator took account of the matters mentioned in subsection (5) when making the original determination—an application for a certificate of entitlement that covers the period mentioned in subsection (5).

### **53 Adjusting crediting period—transferee offsets project**

The crediting period for a transferee offsets project ends at:

- (a) if the crediting period for the transferee offsets project ends later than the crediting period for the transferor offsets project—the end of the crediting period for the transferor offsets project; or
- (b) if the crediting period for the transferee offsets project ends earlier than the crediting period for the transferor offsets project—the end of the crediting period for the transferee offsets project.

#### **54 Adjusting reporting period—transferee offsets project**

- (1) The reporting period during which an eligible offsets project becomes a transferee offsets project must not extend beyond the following times, whichever occurs first:
  - (a) 5 years after the start time of the reporting period for the transferee offsets project;
  - (b) 5 years after the start time of the reporting period for the transferor offsets project.
- (2) In this section:

**start time**, in relation to the relevant reporting period for a transferor offsets project or a transferee offsets project, means:

- (a) the time at which the first crediting period for the project started; or
- (b) if at least one offsets report for the project has been given to the Regulator under section 76 of the Act—the time immediately after the end of the previous reporting period for the project.

## Part 4—Fit and proper person test

### Division 1—Events that have happened

#### 60 Operation of this Division

For subparagraphs 60(1)(a)(i), (2)(a)(i) and (2)(a)(ii) of the Act, this Division specifies events to which regard must be had for the purposes of the fit and proper person test for individuals and bodies corporate.

Note: Nothing in this Division affects the operation of Part VIIC of the *Crimes Act 1914* (which includes provisions that, in certain circumstances, relieve persons from the requirement to disclose spent convictions and require persons aware of such convictions to disregard them).

#### 61 Events for individuals, bodies corporate and executive officers of bodies corporate

- (1) For individuals, bodies corporate and executive officers of bodies corporate (a **relevant person**), the following events are specified:
  - (a) the relevant person has been convicted of an offence against a law of the Commonwealth, a State or a Territory, where the offence relates to:
    - (i) dishonest conduct; or
    - (ii) the conduct of a business; or
    - (iii) the environment or the protection of the environment;
    - (iv) work health and safety;
  - (b) the relevant person has been convicted of an offence against section 136.1, 137.1 or 137.2 of the *Criminal Code*;
  - (c) an order has been made against the relevant person under section 76 of the *Competition and Consumer Act 2010*;
  - (d) an order has been made against the relevant person under section 224 of Schedule 2 to the *Competition and Consumer Act 2010*, as that section applies as a law of the Commonwealth, a State or a Territory;
  - (e) during the 3-year period preceding the making of the application that is under consideration, the relevant person engaged in conduct that:
    - (i) under a Commonwealth, State or Territory law relating to the environment or to work health and safety, was the subject of an enforceable undertaking, an infringement or penalty notice or criminal proceedings that have not been finally determined; and
    - (ii) is of a kind that the Regulator considers relevant given the nature of the offsets project that is the subject of the application;
  - (f) the relevant person has breached the Act or the associated provisions;
  - (g) the relevant person has breached the Registry Act or regulations under that Act;
  - (h) the relevant person has breached the NGER Act or regulations under that Act;

- (i) the relevant person has breached the *Renewable Energy (Electricity) Act 2000* or regulations under that Act;
- (j) the relevant person has:
  - (i) been refused registration in a renewable energy, or energy efficiency, scheme operating under a law mentioned in subsection 21(2); or
  - (ii) had their registration in such a scheme cancelled; or
  - (iii) been suspended from participating in such scheme;
- (k) any other events that the Regulator considers relevant.

(2) Paragraphs (1)(a) to (j) do not limit paragraph (1)(k).

## **62 Events for individuals**

For individuals, the following events are also specified:

- (a) the individual has been convicted, under a law of a foreign country, of an offence that corresponds to an offence mentioned in paragraph 61(1)(a) or (b);
- (b) an order that corresponds to an order mentioned in paragraph 61(1)(c) or (d) has been made against the individual under a law of a foreign country;
- (c) the individual has been convicted of an offence against a law of a foreign country in respect of a matter that corresponds to a matter in relation to which an order mentioned in paragraph 61(1)(c) or (d) may be made;
- (d) during the 3-year period preceding the making of the application that is under consideration, the individual has been issued with a notice under a law of a foreign country that corresponds to a notice mentioned in paragraph 61(1)(e);
- (e) the individual has breached a law of a foreign country that corresponds to a law mentioned in any of paragraphs 61(1)(f) to (i).

## **63 Events for bodies corporate**

For bodies corporate, the following events, if they occur overseas or under a law of a foreign country, are also specified:

- (a) the body corporate is, or is being, wound up;
- (b) a receiver, or a receiver and manager, has been appointed (whether or not by a court) and is acting in respect of any property of the body corporate;
- (c) the body corporate is under administration;
- (d) the body corporate has executed a deed of company arrangement that has not yet terminated;
- (e) the body corporate has entered into a compromise or arrangement with a person the administration of which has not yet concluded.

## **64 Events for executive officers of bodies corporate**

For executive officers of bodies corporate, the following events are also specified:



- (a) the officer has been convicted, under a law of a foreign country, of an offence that corresponds to an offence mentioned in paragraph 61(1)(a) or (b);
- (b) an order that corresponds to an order mentioned in paragraph 61(1)(c) or (d) has been made against the officer under a law of a foreign country;
- (c) the officer has been convicted of an offence against a law of a foreign country in respect of a matter that corresponds to a matter in relation to which an order mentioned in paragraph 61(1)(c) or (d) may be made;
- (d) during the 3-year period preceding the making of the application that is under consideration, the officer has been issued with a notice under a law of a foreign country that corresponds to a notice mentioned in paragraph 61(1)(e);
- (e) the officer has breached a law of a foreign country that corresponds to a law mentioned in any of paragraphs 61(1)(f) to (i);
- (f) the officer has been disqualified from being a director of a body corporate under an order made by a court of a foreign country;
- (g) the officer has been disqualified from being concerned in the management of a body corporate under an order made by a court of a foreign country.

## **Division 2—Other matters**

### **65 Operation of this Division**

For subparagraphs 60(1)(a)(ii) and (2)(a)(iii) of the Act, this Division specifies other matters to which regard must be had for the purposes of the fit and proper person test for individuals and bodies corporate.

Note: Nothing in this Division affects the operation of Part VIIC of the *Crimes Act 1914* (which includes provisions that, in certain circumstances, relieve persons from the requirement to disclose spent convictions and require persons aware of such convictions to disregard them).

### **66 Other matters for individuals and bodies corporate**

For individuals and bodies corporate, the following matters are specified:

- (a) the circumstances surrounding:
  - (i) an event mentioned in Division 1 that has happened in relation to the individual, body corporate or an executive officer of the body corporate; or
  - (ii) a series of such events; or
  - (iii) a pattern of behaviour by the individual, body corporate or an executive officer of the body corporate;
- (b) any other matters that the Regulator considers relevant.

## Part 5—Crediting Period

### Division 1—Limit on deferral of start of crediting period

#### 66A Operation of this Division

For subparagraph 69(5)(b)(i) of the Act, this Division specifies a number of months to be the limit on the deferral of the start of a project's crediting period for particular kinds of projects.

#### 66B Limit on deferral of start of crediting period

- (1) For eligible offsets projects whose crediting period start time under paragraph 69(4)(a) of the Act is in the period 1 July 2010 to 30 June 2012—72 months is specified.
- (2) For eligible offsets projects whose crediting period start time under paragraph 69(4)(a) of the Act is in the period 1 July 2012 to 30 June 2014—48 months is specified.
- (3) For eligible offsets projects whose crediting period start time under paragraph 69(4)(a) of the Act is in the period 1 July 2014 to 13 December 2014—24 months is specified.

#### 66C Limit on deferral of start of crediting period—certain savanna sequestration projects and savanna emissions avoidance projects

- (1) For an eligible offsets projects that is a savanna sequestration project to which section 30A or 30B applied—1 month is specified.
- (2) For eligible offsets projects that is a savanna emissions avoidance project commencing after a revoked savanna sequestration project—1 month is specified.

#### 66D Limit on deferral of start of crediting period—certain methodology determinations

For an eligible offsets project covered by a methodology determination specified in column 2 of the following table (including a project covered by an earlier version of the methodology determination applicable to the project in accordance with sections 125, 126, 127 or 130 of the Act), the number of months in column 3 of the table is specified.

<b>Limit on deferral for certain methodology determinations</b>		
<b>Item</b>	<b>Methodology determination</b>	<b>Months specified</b>
1	<i>Carbon Credits (Carbon Farming</i>	60

Limit on deferral of start of crediting period **Division 1**

## Section 66D

<b>Limit on deferral for certain methodology determinations</b>		
<b>Item</b>	<b>Methodology determination</b>	<b>Months specified</b>
	<i>Initiative—Carbon Capture and Storage) Methodology Determination 2021</i>	
2	<i>Carbon Credits (Carbon Farming Initiative—Industrial and Commercial Emissions Reduction) Methodology Determination 2021</i>	36

## **Part 6—Reporting and notification requirements**

### **Division 1—Minimum length of first and subsequent reporting periods**

#### **67 Operation of this Division**

For subparagraphs 76(1)(c)(ii) and (2)(c)(ii) of the Act, this Division specifies the minimum number of months applicable to an offsets report.

Note: The reporting period that an offsets report is about must not be shorter than the minimum number of months applicable to the offsets report.

#### **68 Minimum number of months applicable to offsets reports**

The minimum number of months applicable to an offsets report about an eligible offsets project is 1 month, or such greater number of months that is less than 6 months, if the carbon dioxide equivalent net abatement amount for the project in relation to that month, or that number of months, is 2 000 tonnes of carbon dioxide equivalent or more.

#### **68A Minimum number of months applicable to offsets reports for transitioning soil carbon projects**

The minimum number of months applicable to an offsets report (a *transitional offsets report*) about a soil carbon project is 1 month if:

- (a) the *Carbon Credits (Carbon Farming Initiative—Measurement of Soil Carbon Sequestration in Agricultural Systems) Methodology Determination 2018* was the applicable methodology determination for the project for the reporting period immediately before the reporting period for the transitional offsets report; and
- (b) the transitional offsets report is for the first reporting period for which the *Carbon Credits (Carbon Farming Initiative—Estimation of Soil Organic Carbon Sequestration using Measurement and Models) Methodology Determination 2021* is the applicable methodology determination for the project.

## **Division 2—General requirements for offsets reports**

### **69 Manner and form of offsets reports**

For paragraph 76(4)(a) of the Act, an offsets report must be in the approved form.

### **70 Information that must be set out in offsets reports**

- (1) For paragraph 76(4)(b) of the Act, this section specifies information that must be set out in an offsets report about an eligible offsets project for a reporting period.

#### *General information*

- (2) The offsets report must set out the following information:
- (a) the unique project identifier for the project;
  - (b) the start and end dates of the reporting period;
  - (c) the name of:
    - (i) the project proponent; or
    - (ii) if there are multiple project proponents—the nominee of the project proponents;
  - (d) the amount of:
    - (i) each component of the equation or calculation that, under the applicable methodology determination, is the final equation or calculation to be used to work out the carbon dioxide equivalent net abatement amount, or the carbon dioxide equivalent net sequestration amount, for the project for the reporting period; and
    - (ii) if the Regulator publishes, on the Regulator’s website, guidelines about which equations and calculations for working out the carbon dioxide equivalent net abatement amount, or the carbon dioxide equivalent net sequestration amount, for the project are significant equations or calculations—each component of each of those significant equations and calculations;
  - (e) if the offsets report must be accompanied by a report of an initial audit, the extent and manner of the project’s compliance with project eligibility requirements and monitoring requirements during the period of time covered by the audit;
  - (f) if the offsets report must be accompanied by a report of a subsequent audit or a triggered audit and, under Subdivision C of Division 3 of this Part, the audit was required to be about a particular matter—a description of the matter and why it was required to be audited;
  - (g) whether an application for a certificate of entitlement in respect of the project for the reporting period has been, or will be, made under section 12 of the Act;
  - (h) whether the offsets report is included in the same document as another offsets report under subsection 76(8) of the Act;

- (i) if the project proponent has chosen to divide the project into parts in accordance with section 77A of the Act—both:
  - (i) a statement that the project has been divided into parts under that section; and
  - (ii) a description of the part of the project that the offsets report is about;
- (j) a signed statement by the project proponent that the information included in, and any document accompanying, the offsets report:
  - (i) meets the requirements in this instrument and any requirements in the applicable methodology determination; and
  - (ii) is accurate;
- (k) a signed statement by the project proponent that all inputs used to work out the carbon dioxide equivalent net abatement amount, or the carbon dioxide equivalent net sequestration amount, for the project for the reporting period are accurate;
- (l) if the project is a savanna emissions avoidance project or savanna sequestration project—evidence that the requirements of subsection 9(6) were satisfied throughout the reporting period;
- (m) if the project is an alternative assurance project and information must be included in an offsets report to meet any conditions for the project to be an alternative assurance project—that information.

Note: The offsets report must also include any information that is required to be included in the report under the applicable methodology determination (see subsection 76(7) of the Act).

*Information about changes to the project*

- (3) The offsets report must also set out the following information:
  - (a) if, since an offsets report accompanied by an audit report was last given to the Regulator about the project, the extent or manner of the project's compliance with project eligibility requirements or monitoring requirements has changed—both:
    - (i) a description of the change; and
    - (ii) an explanation of how the project is continuing to comply with the requirements;
  - (b) if the offsets report must be accompanied by a report of an initial audit and the scope or location of the project has changed significantly since the application for a section 27 declaration in relation to the project was made—both:
    - (i) a description of the change; and
    - (ii) an explanation of how the changed scope, or the conduct of the project at any additional location, is consistent with the applicable methodology determination;
  - (c) if, since an offsets report accompanied by an audit report was last given to the Regulator about the project, the scope or location of the project has changed significantly—both:
    - (i) a description of the change; and

- (ii) an explanation of how the changed scope, or the conduct of the project at any additional location, is consistent with the applicable methodology determination;
- (d) if, in accordance with paragraph 13(1)(d), the application for a section 27 declaration in relation to the project was accompanied by details of a sub-method to be used for the project and a different sub-method is used in preparing the offsets report—details of the sub-method used;
- (e) if, during the reporting period, a reportable change occurs to the kinds of activities included in the project—both:
  - (i) a description of the change; and
  - (ii) an explanation of how, following the change, the activities included in the project are consistent with the applicable methodology determination.

Note: For paragraphs (3)(b) and (c), examples of when the scope or location of a project may change significantly include the following:

- (a) if the project starts to be carried out at a greater number of sites or at sites not identified in the application for a section 27 declaration;
- (b) if the project undergoes a substantial expansion at an existing site;
- (c) if the overall scale of the project is significantly expanded.

*Information for regeneration projects*

(3A) The offsets report for a regeneration project must set out the following information:

- (a) if:
  - (i) a reporting period ends more than 5 years after the start of the project's last or only crediting period and the information required by this paragraph has not been included in an offsets report within the last 5 years; or
  - (ii) the Regulator requests, in writing, some or all of the following information in relation to a carbon estimation area after a risk based assessment of the project;

an explanation, for each carbon estimation area included in the offsets report that has not already attained forest cover:

- (iii) of the progress towards or attainment of forest cover in each such carbon estimation area and evidence supporting that progress or attainment; and
- (iv) of how the project mechanism has continued to be implemented in each such carbon estimation area and evidence supporting that continued implementation;
- (v) of how the boundaries and stratification of the carbon estimation area meet the requirements of the applicable methodology determination;

taking into account any guidelines published by the Regulator on its website for the purpose of this paragraph, as in force from time to time;

Note: In 2018, the Regulator's website was <http://www.cleanenergyregulator.gov.au>

- (b) if:



- (i) the offsets report includes a carbon estimation area that has passed its forest cover assessment date; and
- (ii) the information required by this paragraph has not already been included in an offsets report;

an explanation of the evidence that demonstrates whether or not the requirements of subsection 9AA(3) are satisfied in relation to the carbon estimation area, taking into account any guidelines published by the Regulator on its website for the purpose of this paragraph, as in force from time to time;

Note: In 2018, the Regulator's website was <http://www.cleanenergyregulator.gov.au>

- (c) for each carbon estimation area included in the offsets report:
  - (i) the date that the modelling of forest regeneration commenced; and
  - (ii) the estimated forest cover assessment date; and
  - (iii) details of any eligible growth disruption period; and
  - (iv) an explanation of whether forest cover has been attained; and
  - (v) the total carbon stock at the end of the reporting period, in both tonnes of carbon and tonnes of carbon per hectare, under the modelling undertaken in accordance with the applicable methodology determination for the reporting period;
- (d) a statement that during the reporting period the project proponent and other relevant land holders for the project area have taken reasonable steps to comply with requirements relating to the management of weeds and pests in the project area imposed by or under applicable State, Territory or local government laws.

*Information about certain facilities*

- (4) If:
    - (a) the offsets report:
      - (i) is given to the Regulator on or after 1 July 2016; and
      - (ii) is for a reporting period that includes all or part of a financial year; and
    - (b) the project involves carbon abatement at a facility:
      - (i) that is, or is likely to be, a designated large facility, within the meaning of section 22XJ of the NGER Act, for the financial year; or
      - (ii) for which there is a monitoring period, within the meaning of section 22XJ of that Act, that includes all or part of the financial year;
- the offsets report must also set out what portion of the carbon dioxide equivalent net abatement amount for the project for the reporting period is attributable to carbon abatement at each facility that the project involves.

*Information relating to permanence*

- (4A) If:

- (a) the offsets report is the first offsets report to be submitted after the start of the 8<sup>th</sup> year of a sequestration offsets project's last or only crediting period; or
- (b) the offsets report is the first offsets report to be submitted after the start of the 24<sup>th</sup> year of a sequestration offsets project's last or only crediting period;

the offsets report must also set out an explanation of the steps undertaken, and intended to be undertaken, to ensure carbon remains sequestered in the project area for the permanence obligation period for the project.

*Meaning of reportable change*

- (5) A **reportable change** occurs to the kinds of activities included in an eligible offsets project if:
  - (a) the change is not minor or trivial; and
  - (b) following the change, the project includes activities that either:
    - (i) were not included in the description of the project that accompanied the application for a section 27 declaration in relation to the project; or
    - (ii) were included in the description of the project that accompanied the application for a section 27 declaration in relation to the project, but were the subject of a previous reportable change that was included in a previous offsets report about the project.

- (6) In this section:

**attained forest cover**, in relation to a carbon estimation area, has the meaning given by subsection 9AA(4).

**carbon estimation area** has the meaning given by subsection 9AA(7).

**eligible growth disruption period** has the meaning given by subsection 9AA(7).

**forest cover assessment date** has the meaning given by subsection 9AA(6).

## 71 Documents that must accompany offsets reports

For paragraph 76(4)(d) of the Act, an offsets report about an eligible offsets project for a reporting period must be accompanied by the following documents:

- (a) any document that, under the applicable methodology determination, is required to be provided to the Regulator with the offsets report;
- (b) if the project is an area-based offsets project and the project proponent has chosen to divide the project into parts in accordance with section 77A of the Act—a scale map identifying the project area to which the offsets report relates;
- (c) if the offsets report for a regeneration project is required to contain information under subsection 70(3A)—documents to support the information, taking into account any guidelines published by the Regulator

on its website for the purpose of this paragraph, as in force from time to time;

Note: In 2018, the Regulator's website was <http://www.cleanenergyregulator.gov.au>

- (d) if the project is an alternative assurance project and a document must be included in an offsets report to meet any conditions for the project to be an alternative assurance project—that document.

## **Division 3—Audit reports to accompany offsets reports**

### **Subdivision A—Operation of this Division**

#### **72 Operation of this Division**

For paragraphs 76(4)(c), (ca) and (cb) of the Act, this Division sets out requirements in relation to audit reports that must accompany offsets reports.

### **Subdivision B—Audit schedules**

#### **73 Audit schedules**

- (1) If the Regulator declares an offsets project to be an eligible offsets project, the Regulator must give an audit schedule for the project to the project proponent when the Regulator gives the copy of the declaration to the project proponent.
- (2) The *audit schedule* must set out:
  - (a) the number of scheduled audits (if any) for the project; and
  - (b) the method for determining the offsets report that the report of a scheduled audit must accompany; and
  - (c) the period of time to be covered by each scheduled audit that is not an initial audit; and
  - (d) if an alternative assurance project is required to undertake one or more scheduled audits—whether the first of those audits is an initial audit.

#### *Meaning of scheduled audit*

- (3) A *scheduled audit* must be:
  - (a) an initial audit; or
  - (b) a subsequent audit.

#### *Transitioning projects*

- (4) As soon as practicable after the commencement day, the Regulator must:
  - (a) prepare an audit schedule for each transitioning project; and
  - (b) give the audit schedule to the project proponent.

#### *Variation of audit schedule*

- (5) The Regulator may vary an audit schedule for a project to do the following:
  - (a) if the Regulator amends the audit thresholds instrument—remove one or more subsequent audits that would not be required by the amended instrument;
  - (aa) if the project becomes an alternative assurance project—remove one or more scheduled audits that would not be required for the project;

(ab) if the project changes so that it is no longer an alternative assurance project or does not meet conditions to be an alternative assurance project—require one or more scheduled audits that would have been required if the project was not an alternative assurance project;

(b) make any other change to which the project proponent agrees.

Note: The Regulator may also vary an audit schedule for a project under subsection 77(4).

(6) As soon as practicable after an audit schedule for a project is varied under subsection (5) or 77(4), the Regulator must give the variation to the project proponent.

(7) A project is an **alternative assurance project** if:

(a) the applicable methodology determination for the project is prescribed by the audit thresholds instrument; and

(b) the project meets any criteria prescribed by the audit thresholds instrument for projects covered by the methodology determination; and

(c) the project proponent meets any conditions related to the operation, monitoring or reporting for the project specified by the audit thresholds instrument; and

(d) the project proponent requests, whether in an application or otherwise, for the project to be an alternative assurance project.

Note: An alternative assurance project is generally a low risk project which will have less or no audits because of its risk profile and other mechanisms the Regulator has available to address risks with the project.

(8) A decision to vary an audit schedule under paragraph (5)(ab) is a reviewable decision under section 240 of the Act.

## **Subdivision C—Scheduled (initial and subsequent) audits**

### **74 Initial audits**

(1) Unless the project is an alternative assurance project—the first scheduled audit for an eligible offsets project must be an initial audit.

Note: If an alternative assurance project is required to undertake one or more scheduled audits, the audit schedule will specify whether or not the first scheduled audit is an initial audit.

#### *Scope of initial audits*

(2) The audit must be about whether, in all material respects:

(a) the project has, during the period of time covered by the audit, operated and been implemented in accordance with:

(i) the section 27 declaration that is in operation for the project; and

(ii) the methodology determination used for the project; and

(iii) the requirements of the Act; and

- (b) the project proponent has, during the period of time covered by the audit, met the requirements specified in the applicable methodology determination under subsection 106(3) of the Act; and
  - (c) the offsets reports that cover the period of time covered by the audit have been prepared in accordance with section 76 of the Act.
- (2A) If requested in writing by the Regulator after agreement between the Regulator and the project proponent, the initial audit must also be about any matter identified by the Regulator in a risk-based assessment of the project.
- (3) The audit must cover the longest of the following periods:
- (a) the first reporting period for the project;
  - (b) the first 6 months of the project.
- (3A) However, if the initial audit is required after a variation to the audit schedule under paragraph 73(5)(ab), the audit must cover a period of not less than 6 months specified in the varied audit schedule provided under subsection 73(6).

*Transitioning projects*

- (4) However, this section does not apply in relation to a transitioning project if an audit report for the project was given to Regulator in accordance with paragraph 76(4)(c) of the Act before the commencement day.

## **75 Subsequent audits—number**

- (1) An eligible offsets project (other than an alternative assurance project) must have not less than 2 subsequent audits.

*Audit thresholds*

- (3) If the annual average abatement amount for the project exceeds an audit threshold, the project must have the number of subsequent audits required for the threshold.
- (4) The Regulator may, by legislative instrument (the ***audit thresholds instrument***), set out one or more of the following:
- (a) audit thresholds for eligible offsets projects;
  - (b) the number of subsequent audits required for projects that meet each audit threshold;
  - (ba) matters relating to alternative assurance projects for subsection 73(7);
  - (bb) if an alternative assurance project is required to undertake one or more scheduled audits, whether the first of those audits is an initial audit;
  - (c) trigger audit thresholds for eligible offsets projects;
  - (d) variance audit thresholds for eligible offsets projects.
- (4A) In making an instrument under subsection (4), the Regulator must take into account:

- (a) the proportionality of likely audit burden to risks associated with relevant classes of eligible offsets projects; and
- (b) whether particular classes of eligible offsets projects should have more or less scheduled audits or no scheduled audits; and
- (c) the likely effectiveness of any alternative assurance process that may be prescribed or specified for the purposes of paragraphs 73(7)(b) or (c); and
- (d) the principle that any costs for a project proponent of being an alternative assurance project should be less than the costs of audits that would otherwise be conducted; and
- (e) any other matter the Regulator considers relevant.

*Large projects*

- (5) If the project is a large project, the number of subsequent audits for the project:
  - (a) may be decided by agreement between the Regulator and the project proponent; or
  - (b) if no such agreement is reached—is the number determined in accordance with the audit thresholds instrument.

*Reducing number of subsequent audits*

- (6) The Regulator may reduce the number of subsequent audits for the project in accordance with the audit thresholds instrument as amended from time to time, but must not increase the number.
- (7) Subsection (6) does prevent the Regulator from varying the number of subsequent audits for the project under subsection (5) (large projects).

*Meaning of **annual average abatement amount***

- (8) The **annual average abatement amount**, for an offsets project, means the forward abatement estimate for the project divided by the number of years in:
  - (a) the crediting period for the project; or
  - (b) if the project has more than one crediting period—the last crediting period for the project.
- (9) For the purpose of working out the annual average abatement amount for a transitioning project, the forward abatement estimate for the project must be given to the Regulator within 60 days after the commencement day.

*Meaning of **large project***

- (10) An eligible offsets project is a **large project** if the project has an annual average abatement amount of more than 250 000 tonnes of carbon dioxide equivalent.

## **76 Subsequent audits—scope**

- (1) A subsequent audit must be about:

- (a) whether, in all material respects, the offsets reports that cover the period of time covered by the audit have been prepared in accordance with section 76 of the Act; and
  - (b) if a change relating to the project's compliance with project eligibility requirements or monitoring requirements, or a change relating to the scope or location of the project, has been notified in an offsets report in accordance with paragraph 70(3)(a) or (c), and the change has not been audited—whether, following the change, the project met the project requirements in all material respects; and
  - (c) if a change in the way the project is being operated that is likely to result in the section 27 declaration for the project being revoked has been notified in accordance with section 87, and the change has not been audited—whether the reasons the section 27 declaration was likely to be revoked have been rectified in all material respects.
- (2) The subsequent audit must also be about any of the following if requested in writing by the Regulator:
- (a) whether, in all material respects, any matter identified as a qualification to an audit opinion in a previous audit of the project has met project requirements during the period of time covered by the audit;
  - (b) any matter that could be covered by an initial audit of the project if:
    - (i) the project is using a different methodology determination from that used when the project was last audited; or
    - (ii) the technology used by the project is in the early stages of commercialisation or not widely used in Australia; or
    - (iii) the methodology determination used for the project, or similar schemes for calculating and rewarding carbon abatement, have not been widely applied in Australia;
  - (c) by agreement between the Regulator and the project proponent—any matter identified by the Regulator in a risk-based assessment of the project.
- (3) Notice under subsection (2) must be given at a reasonable time before the report of the subsequent audit must be given to the Regulator.
- (4) The audit must cover a period of not less than 12 months.

## **Subdivision D—Triggered audits**

### **77 Threshold audits**

- (1) An eligible offsets project must be audited if the carbon dioxide equivalent net abatement amount for a reporting period for the project is greater than:
  - (a) 250 000 tonnes of carbon dioxide equivalent; or
  - (b) a trigger audit threshold for the project.
- (2) The audit (the *threshold audit*) must be about:



- (a) whether, in all material respects, the offsets report about the project for the reporting period has been prepared in accordance with section 76 of the Act; and
  - (b) any other aspect of the project notified in writing by the Regulator.
- (3) The report of the audit must accompany the offsets report for the reporting period.

*Threshold audit may replace subsequent audit*

- (4) If a threshold audit is undertaken for a project in accordance with section 80, and the report of the audit meets the eligibility requirements set out in subsection 9(2), the Regulator may remove a subsequent audit from the audit schedule for the project.
- (5) In deciding whether or not to remove a subsequent audit because of the threshold audit, the Regulator must have regard to the following:
- (a) the number of audits that have been undertaken in relation to the project;
  - (b) the scope of those audits;
  - (c) the results of those audits;
  - (d) the number of subsequent audits remaining for the project.

## **78 Variance audits**

- (1) An eligible offsets project must be audited if:
- (a) the Regulator requests the audit in writing; and
  - (b) the carbon dioxide equivalent net abatement amount for a reporting period for the project is outside the variance audit threshold for the project.
- (2) The audit must be about:
- (a) whether, in all material respects, the offsets report about the project for the reporting period has been prepared in accordance with section 76 of the Act; and
  - (b) any other aspect of the project notified in writing by the Regulator.
- (3) The report of the audit must accompany the offsets report for the reporting period specified in the request.

Note: This would generally be the next offsets report following the request.

## **79 Qualified or other conclusion audits**

- (1) An eligible offsets project must be audited if:
- (a) the Regulator requests the audit in writing; and
  - (b) a previous audit of the project did not give a reasonable assurance conclusion about a matter.
- (2) The audit must be about:

- (a) whether, in all material respects, the matter in relation to which the reasonable assurance conclusion was not given has been appropriately addressed such that, during the period of time covered by the audit, the project has operated and been implemented in accordance with:
    - (i) the section 27 declaration that is in operation for the project; and
    - (ii) the methodology determination used for the project; and
    - (iii) the requirements of the Act; and
  - (b) any other aspect of the project notified in writing by the Regulator.
- (3) The report of the audit must accompany the offsets report for the reporting period specified in the request.

### **79A Forest cover audits of regeneration projects**

- (1) An eligible offsets project that is a regeneration project must be audited if:
- (a) an offsets report for a reporting period will be submitted which includes one or more carbon estimation areas that have past their forest cover assessment date; and
  - (b) a previous audit report:
    - (i) prepared under this Division; or
    - (ii) prepared at the request of the project proponent and conducted in accordance with the requirements of section 80;
- has not been provided to the Regulator confirming, by way of a reasonable assurance conclusion or a qualified reasonable assurance conclusion, that the requirements of subsection 9AA(3) are satisfied for each carbon estimation area that is included in the offsets report and has passed its forest cover assessment date.
- (2) However, an audit need not be prepared if the Regulator agrees, in writing, that it is unnecessary.
- (3) The audit must be about whether the requirements of subsection 9AA(3) are satisfied in relation to the reporting period.
- (4) The report of the audit must accompany the offsets report for the reporting period mentioned in paragraph (1)(a).
- (5) In this section:
- carbon estimation area* has the meaning given by subsection 9AA(7).
- forest cover assessment date* has the meaning given by subsection 9AA(6).

### **Subdivision E—Conduct of audits**

#### **80 Conduct of audits**

An audit under this Division:

- (a) must be conducted in accordance with the relevant requirements for reasonable assurance engagements under the *National Greenhouse and Energy Reporting (Audit) Determination 2009*; and
- (b) must have an audit team leader who is registered as a Category 2 auditor or a Category 3 auditor under subregulation 6.25(3) of the *National Greenhouse and Energy Reporting Regulations 2008*; and
- (c) must be otherwise in accordance with subsection 75(1) of the NGER Act.

Note: The term audit team leader is defined in the Act.

## **Division 3A—Declaration that offsets reporting requirements does not apply**

### **80A Regulator may declare offsets reporting requirements does not apply to project**

#### *When Regulator may make declaration*

- (1) For the purposes of subsection 77(1) of the Act, the Regulator may declare, in writing, that subsection 76(2) of the Act does not apply to an eligible offsets project if:
  - (a) the Regulator receives an application under subsection (2); and
  - (b) the project is a sequestration offsets project; and
  - (c) the Regulator is satisfied that the project has reached its maximum carbon sequestration capacity; and
  - (d) if the project is a savanna sequestration project or soil carbon project—the permanence obligation period for the project has ended.

#### *Application*

- (2) The application must be made by the project proponent for the project and must be in the approved form and be accompanied by the following information or documents:
  - (a) the name and contact details of the applicant and whether the applicant is:
    - (i) the project proponent; or
    - (ii) the nominee of multiple project proponents;
  - (b) the unique project identifier for the project;
  - (c) an explanation of how the project has reached its maximum carbon sequestration capacity;
  - (d) an explanation of how any risks of reversal of sequestration during the remainder of the permanence period are to be managed;
  - (e) a signed declaration by the applicant that the information included in, and the information and any documents accompanying the application:
    - (i) meets the requirements in this subsection; and
    - (ii) is accurate.

*Timing*

- (3) The Regulator must take all reasonable steps to ensure that a decision is made on the application:
  - (a) if the Regulator requested the applicant to give further information under section 80B in relation to the application—within 90 days after the applicant gave the Regulator the information; or
  - (b) otherwise—within 90 days after the application was made.

*Notification*

- (4) If the Regulator makes the declaration, the Regulator must, as soon as practicable after making the declaration, give a copy of the declaration to the applicant.

*Refusal*

- (5) If the Regulator refuses to make the declaration, the Regulator must give the applicant written notice of the decision and the reasons for the decision.

**80B Regulator may request further information**

- (1) The Regulator may, by written notice, require a project proponent that has applied under section 80A for a declaration to give to the Regulator further information in relation to the application, within the period specified in the notice.
- (2) If the project proponent breaches the requirement, the Regulator may, by written notice, inform the project proponent that the Regulator:
  - (a) refuses to consider the application; or
  - (b) refuses to take any action, or any further action, in relation to the application.

## **Division 4—Notification requirements**

### **Subdivision A—Significant reversals**

#### **81 Significant reversals relating to natural disturbances**

For subsection 81(3) of the Act, a reversal of the removal of carbon dioxide from the atmosphere that is caused, or likely to have been caused, by a natural disturbance is taken to be a significant reversal if the size of the project area in which the reversal occurs is at least 5% of the total project area.

#### **82 Significant reversals relating to conduct**

For subsection 82(4) of the Act, a reversal of the removal of carbon dioxide from the atmosphere that is caused, or likely to have been caused, by conduct engaged in by a person is taken to be a significant reversal if the size of the project area in which the reversal occurs is at least the smaller of the following:

- (a) 5% of the total project area;
- (b) 50 hectares.

### **Subdivision B—Other notification requirements**

#### **83 Operation of this Subdivision**

For subsection 85(2) of the Act, this Subdivision sets out requirements for project proponents to notify the Regulator of certain matters.

#### **84 Changes relating to project proponent**

- (1) The project proponent for an eligible offsets project must notify the Regulator, in the approved form, of a change to:
  - (a) the project proponent's business name or trading name; or
  - (b) the project proponent's contact details.
- (2) The project proponent must notify the Regulator of the change within 30 days after the change occurs.

#### **85 Errors in offsets reports**

- (1) The project proponent for an eligible offsets project must notify the Regulator, in writing, of an error in an offsets report about the project that has been given to the Regulator if the error relates to:
  - (a) whether the project meets project eligibility requirements; or
  - (b) the carbon dioxide equivalent net abatement amount, or the carbon dioxide equivalent net sequestration amount, for the project in a way that affects the unit entitlement to be specified in a certificate of entitlement for the project.

- (2) The project proponent must notify the Regulator of the error within 60 days after the project proponent becomes aware of the error.

### **86 Acts causing reversal of removal of carbon dioxide**

- (1) The project proponent for an eligible offsets project must notify the Regulator, in writing, of an act that causes, or is likely to cause, a reversal of the removal of carbon dioxide from the atmosphere by the project if:
  - (a) the act is engaged in by the project proponent; and
  - (b) the size of the project area in which the reversal occurs is at least the smaller of the following:
    - (i) 5% of the total project area;
    - (ii) 50 hectares.
- (2) The project proponent must notify the Regulator of the act within 60 days after the act is engaged in.

### **87 Changes relating to operation of project**

- (1) The project proponent for an eligible offsets project must notify the Regulator, in writing, of a change in the way the project is being operated if the change is likely to result in the section 27 declaration in relation to the project being revoked under regulations or legislative rules made for the purposes of subsection 35(1) of the Act.
- (2) The project proponent must notify the Regulator of the change within 60 days after the project proponent becomes aware of the change.

## **Part 7—Requirements to relinquish Australian carbon credit units**

### **88 Requirement to relinquish—significant reversals relating to an event other than natural disturbances or conduct**

For paragraph 90(1)(d) of the Act, a reversal of the removal of carbon dioxide from the atmosphere is taken to be a significant reversal if the size of the project area in which the reversal occurs is at least the smaller of:

- (a) 5% of the total project area; or
- (b) 50 hectares.

### **89 Requirement to relinquish—significant reversals relating to natural disturbances and conduct**

For paragraph 91(1)(d) of the Act, a reversal of the removal of carbon dioxide from the atmosphere is taken to be a significant reversal if the size of the project area in which the reversal occurs is:

- (a) if the reversal is caused, or is likely to have been caused, by a natural disturbance—at least 5% of the total project area; or
- (b) if the reversal is caused, or is likely to have been caused, by conduct engaged in by a person other than the project proponent for the project—at least the smaller of:
  - (i) 5% of the total project area; or
  - (ii) 50 hectares.

## **Part 9—Methodology determinations**

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

For paragraph 128(2)(c) of the Act, a request to approve the application of a specified methodology determination to the project with effect from the start of a reporting period must be accompanied by the following information:

- (a) the unique project identifier for the project;
- (b) the title of the applicable methodology determination made under section 106 of the Act for which the approval is being requested and the date the determination commenced;
- (c) if the applicable methodology determination has been varied under section 114 of the Act—the date the methodology determination was varied;
- (d) a description of the project;
- (e) a statement by the applicant that the project meets the requirements of the applicable methodology determination.



## **Part 10—Multiple project proponents**

### **91 Designation of nominee account**

For paragraph 140(3)(c) of the Act, a request to designate an account as the nominee account for an eligible offsets project must be accompanied by the following information:

- (a) the nominee's full name, date of birth (if an individual), and contact details;
- (b) the full name of the nominee's authorised representative (if one has been nominated);
- (c) the project name for which the nomination is in force;
- (d) the nominee's ABN, ACN, ARBN, and GST registration number (if any).

## **Part 11—Australian carbon credit units**

### **92 Transmission of Australian carbon credit units by operation of law**

- (1) For paragraph 153(2)(b) of the Act, the transferee must give the Regulator a certified copy of a document showing transmission of the title to the Australian carbon credit units to the transferee.

Example: If an Australian carbon credit unit has been transmitted on the making of an order by a court, including a sequestration order, the evidence of the transmission would be a certified copy of the order.

- (2) For subsection 153(3) of the Act, a declaration of transmission must:
- (a) be made in writing; and
  - (b) identify the serial numbers of the Australian carbon credit units transmitted; and
  - (c) set out the name, address and Registry account number of the transferor; and
  - (d) set out the name, address and Registry account number (if any) of the transferee; and
  - (e) include a brief description of the circumstances that resulted in the transmission; and
  - (f) be signed by the transferee.

Note: If the transferee does not already have a Registry account, the transferee must request that one be opened in the transferee's name—see subsection 153(4) of the Act.

### **93 Transmission of Australian carbon credit units to a foreign account**

For section 155 of the Act, Australian carbon credit units must not be transferred from a Registry account to a foreign account.

## **Part 15—Relinquishment of Australian carbon credit units**

### **94 Market value of Australian carbon credit units**

For subsection 179(7) of the Act, the market value of an Australian carbon credit unit is the highest weighted average price for Australian carbon credit units that the Commonwealth has purchased as the result of carbon abatement purchasing processes that is published on the Regulator's website.

Note: Paragraph 163(b) of the Act provides that the Regulator may publish on the Regulator's website the weighted average price for eligible carbon credit units that the Commonwealth is purchasing as a result of a carbon abatement purchasing process.

### **95 Set-off of amounts payable under carbon abatement contracts**

For subparagraph 182(b)(ii) of the Act, amounts payable under carbon abatement contracts are specified.

## **Part 17—Record-keeping and project monitoring requirements**

### **100 Record-keeping requirements—general**

- (1) For subsection 191(1) of the Act, this section sets out record-keeping requirements that a project proponent for an eligible offsets project must comply with.
- (2) The project proponent must make a record of the following, in a form that is readily accessible for inspection and audit:
  - (a) correspondence between the project proponent and the Regulator that is relevant to the project;
  - (b) information that substantiates the application for a section 27 declaration in relation to the project (unless the application was made before 13 December 2014 and the project proponent no longer has any such information);
  - (c) offsets reports about the project;
  - (d) ERF audit reports (if any) about the project proponent;
  - (e) information that shows that the project is, and continues to be, covered by the applicable methodology determination, including details of the emissions reduction, or sequestration, activities undertaken as part of the project;
  - (f) details of any significant change to the scope or location of the project;
  - (g) information that shows that the project is being implemented and operated in a manner that is consistent with project eligibility requirements;
  - (h) information that shows that the carbon dioxide equivalent net abatement amount for the project for a reporting period has been ascertained using a method specified in, or ascertained in accordance with, the applicable methodology determination;
  - (i) information that shows that any monitoring requirements for the project are being complied with;
  - (j) data that is collected while monitoring the project;
  - (k) information about any event that is reasonably likely to significantly increase or decrease the carbon abatement that results from the carrying out of the project;
  - (l) if the project is a sequestration offsets project and, during a reporting period, the project resulted in carbon abatement that is not eligible carbon abatement—the reasons for this;
  - (m) information that, under the applicable methodology determination, is required to be recorded for the project.

Note: For paragraph (2)(f), examples of when the scope or location of a project may change significantly include the following:

- (a) if the project starts to be carried out at a greater number of sites or at sites not identified in the application for a section 27 declaration;
  - (b) if the project undergoes a substantial expansion at an existing site;
  - (c) if the overall scale of the project is significantly expanded.
- (3) The project proponent must retain:
- (a) the record; or
  - (b) a copy of the record;
- for 7 years after the record is made.
- (4) If:
- (a) under regulation 17.1 of the old CFI Regulations, the project proponent was required to retain a record, or a copy of a record, for 7 years after making the record; and
  - (b) on or before the commencement day, the 7-year period has not ended;
- the project proponent must retain the record or copy of the record for the remainder of the 7-year period.

### **101 Record-keeping requirements—preparation of offsets report**

- (1) For subsection 192(2) of the Act, this section sets out record-keeping requirements that a project proponent for an eligible offsets project must comply with if the project proponent:
- (a) makes a record of particular information; and
  - (b) uses the information to prepare an offsets report about the project.
- (2) The project proponent must retain:
- (a) the record; or
  - (b) a copy of the record;
- for 7 years after the offsets report is given to the Regulator.
- (3) If:
- (a) under regulation 17.2 of the old CFI Regulations, the project proponent was required to retain a record, or a copy of a record, for 7 years after an offsets report was given to the Regulator; and
  - (b) on or before the commencement day, the 7-year period has not ended;
- the project proponent must retain the record or copy of the record for the remainder of the 7-year period.

## **Part 18—Monitoring powers**

### **102 Identity cards**

For paragraph 197(2)(a) of the Act, an identity card issued to an inspector by the Regulator must display the following:

- (a) a statement that the cardholder is an inspector for the purposes of the Act;
- (b) the date of expiry of the card;
- (c) a statement that the inspector is authorised to exercise powers under Part 18 of the Act.

Note: Paragraph 197(2)(b) of the Act requires the card to contain a recent photograph of the inspector.

## **Part 19—Audits**

### **103 Compliance audits—requirements for reimbursement**

For paragraphs 214(9)(c) and (d) of the Act, a request to the Regulator for reimbursement of costs incurred in complying with an audit notice must be accompanied by the following information and documents:

- (a) the full name, contact details and bank account details of the person who received the audit notice;
- (b) the unique project identifier for the project to which the audit notice relates;
- (c) evidence of the costs incurred in complying with the audit notice;
- (d) a statement, supported by evidence, of the financial hardship caused by compliance with the audit notice;
- (e) if it has not already been submitted to the Regulator—the audit report;
- (f) a signed declaration that the specified information and documentation meets the requirements of this subsection and is accurate.

## **Part 26—Emissions Reduction Assurance Committee**

### **110 Operation of this Part**

For subsection 260(1) of the Act, this Part sets out the procedures to be followed at, and other matters relating to, meetings of the Emissions Reduction Assurance Committee.

### **111 Procedure at meetings**

- (1) The Emissions Reduction Assurance Committee must hold such meetings as are necessary for the performance of its functions under the Act.
- (2) The meetings of the Committee may be held face-to-face or via teleconference.
- (3) The Secretariat of the Committee:
  - (a) must take minutes of the meetings; and
  - (b) may convene a meeting at any time; and
  - (c) must convene a meeting at the request of the Chair of the Committee.

### **112 Quorum at meetings**

- (1) Subject to this section, at a meeting of the Emissions Reduction Assurance Committee, a quorum is constituted by 4 members of the Committee.
- (1A) The quorum under subsection (1) must include the Chair of the Committee unless:
  - (a) subsection (2) applies in the circumstance where section 262 of the Act has prevented the Chair from participating in the deliberations or decisions of the Committee with respect to a particular matter; or
  - (b) there is no Chair appointed; or
  - (c) the Chair is incapacitated; or
  - (d) the Chair informs the Committee that their presence is not necessary for quorum at a particular meeting.
- (2) However, if:
  - (a) section 262 of the Act prevents a member from participating in the deliberations or decisions of the Committee with respect to a particular matter; and
  - (b) when the member leaves the meeting concerned there is no longer a quorum present; and
  - (c) the number of members still remaining at the meeting is 3;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.



**113 Presiding at meetings**

- (1) The Chair of the Committee must preside at all meetings.
- (2) However:
  - (a) if section 262 of the Act prevents the Chair from participating in the deliberations or decisions of the Committee with respect to a particular matter, the Committee may appoint an acting Chair from the members present to preside at the meeting concerned during any deliberation or decision with respect to that matter; and
  - (b) if there is not Chair appointed or the Chair is absent from the meeting, the Committee may appoint an acting Chair from the members present to preside at the meeting concerned.

**114 Manner of deciding questions**

- (1) Any question arising at a meeting of the Emissions Reduction Assurance Committee must be determined by resolution.
- (2) A resolution is taken to have been passed if:
  - (a) more than half the present and voting members vote for the resolution; and
  - (b) either:
    - (i) all members were informed of the proposed resolution; or
    - (ii) reasonable efforts were made to inform all members of the proposed resolution.

## Part 29—Application and transitional provisions

### Division 1—Application and transitional provisions relating to the *Carbon Credits (Carbon Farming Initiative) Amendment Rule (No. 1) 2019*

#### 120 Applications for certificate of entitlement before or within 28 days of commencement

An application under section 12 of the Act received by the Regulator before the start of the 28<sup>th</sup> day after the commencement of the *Carbon Credits (Carbon Farming Initiative) Amendment Rule (No. 1) 2019* (the **amendment rule**) must be determined as if the amendment rule had not commenced.

#### 121 Offsets reports submitted before or within 28 days of commencement

An offsets report received by the Regulator before start of the 28<sup>th</sup> day after the commencement of the *Carbon Credits (Carbon Farming Initiative) Amendment Rule (No. 1) 2019* (the **amendment rule**) need not include information or documents that are only required after the amendment rule had commenced.

#### 122 Project area variations for certain expired, varied or revoked methods

Paragraph 23(1)(f) does not apply to an application under subsection 23(3) submitted to the Regulator before the date in column 2 of the following table if it relates to a project for which the methodology determination in column 3 of the following table is the applicable methodology determination due to the operation of sections 125, 126 or 127 of the Act.

Project area variations for certain expired, varied or revoked methods		
Item	Application before	Methodology Determination
1	28 February 2022	<i>Carbon Credits (Carbon Farming Initiative—Plantation Forestry) Methodology Determination 2017</i>

#### 123 Application of requirements for new regeneration projects

- (1) Section 20C only applies to applications submitted under section 22 of the Act or subsection 23(3) after the commencement of this section.
- (2) However, a notification submitted to [ERFnotification@agriculture.gov.au](mailto:ERFnotification@agriculture.gov.au) which complies with section 20B before the commencement of this section and indicates that it is in respect of a regeneration project is taken to be an ERF

Section 124 Application of requirements for information that must be set out in  
offsets reports

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regeneration notification or new ERF regeneration notification under section 20C.

- (3) For notifications submitted before the commencement of this section, the 30 day period in subparagraphs 20C(1)(b)(i), (2)(b)(i) and (7)(b)(i) is taken to be 45 days.

**124 Application of requirements for information that must be set out in offsets reports**

Paragraph 70(3A)(d) only applies to offsets reports for reporting periods that end after the commencement of this section.

**125 Application of excluded offsets project requirements to existing applications**

If the Regulator is considering an application under section 22 of the Act or section 23 on the commencement of this section, the excluded offsets project definition in the *Carbon Credits (Carbon Farming Initiative) Regulations 2011* as in force immediately before 1 April 2022 applies to that application instead of sections 20AA and 20AB.

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## Schedule 1—Documents required to establish applicant’s identity

Note: See the definitions of *category A document* and *category B document* in subsection 4(1) and items 1 and 2 of the table in subsection 16(1).

### Part 1—Documents for identifying individuals who are Australian citizens or residents

#### 1 Category A documents

The following are *category A documents* for an individual who is an Australian citizen or ordinarily resident in Australia:

- (a) a birth certificate issued by a State or Territory;
- (b) a current passport issued by the Commonwealth;
- (c) a citizenship certificate issued by the Commonwealth, or documentary evidence that the individual has been registered by the Commonwealth as an Australian citizen by descent;
- (d) a passport, or similar document issued for the purpose of international travel, that:
  - (i) contains a photograph and the signature of the individual; and
  - (ii) is issued by a foreign government, the United Nations or an agency of the United Nations; and
  - (iii) contains evidence of the individual’s immigration status in Australia.

#### 2 Category B documents

The following are *category B documents* for an individual who is an Australian citizen or ordinarily resident in Australia:

- (a) a driver’s licence or a learner’s permit that:
  - (i) is issued under a law of a State or Territory; and
  - (ii) includes a photograph of the individual and the individual’s signature; and
  - (iii) includes a street address that is the same as the address stated for the individual in the application which the document is accompanying;
- (b) a Medicare card;
- (c) a notice that:
  - (i) is issued by a local government body or utilities provider in the 3 months before the application which the document is accompanying is made; and
  - (ii) contains the individual’s name; and
  - (iii) contains the individual’s street address; and

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- (iv) records the provision of services by the local government body or utilities provider to that address or the individual;
  - (d) an Australian firearms licence issued under a law of a State or Territory that includes:
    - (i) the individual's signature; and
    - (ii) a photograph of the individual; and
    - (iii) a street address that is the same as the address stated for the individual in the application which the document is accompanying;
  - (e) a secondary school or tertiary education student identification card that:
    - (i) includes a photograph of the individual; and
    - (ii) was issued by an education authority that has been accredited by the Commonwealth, a State or a Territory government.

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## Part 2—Documents for identifying individuals who are not residents

### 3 Category A documents

The following are *category A documents* for an individual who is not ordinarily resident in Australia:

- (a) a passport, or similar document issued for the purpose of international travel, that:
  - (i) contains a photograph and the signature of the individual in whose name the document is issued; and
  - (ii) is issued by a foreign government, the United Nations or an agency of the United Nations;
- (b) a birth certificate issued by a foreign government, the United Nations or an agency of the United Nations;
- (c) a national identity card issued for the purpose of identification that:
  - (i) contains a photograph and the signature of the individual in whose name the document is issued; and
  - (ii) is issued by a foreign government, the United Nations or an agency of the United Nations.

### 4 Category B documents

The following are *category B documents* for an individual who is not ordinarily resident in Australia:

- (a) a document issued by a foreign government that identifies the individual;
- (b) a marriage certificate issued by a foreign government;
- (c) a driver's licence issued by a foreign government for the purpose of driving a vehicle that contains:
  - (i) a photograph of the individual in whose name the licence is issued; and
  - (ii) a street address that is the same as the address stated for the individual in the application which the document is accompanying.

## Endnotes

### Endnote 1—About the endnotes

The endnotes provide information about this compilation and the compiled law.

The following endnotes are included in every compilation:

Endnote 1—About the endnotes

Endnote 2—Abbreviation key

Endnote 3—Legislation history

Endnote 4—Amendment history

### Abbreviation key—Endnote 2

The abbreviation key sets out abbreviations that may be used in the endnotes.

### Legislation history and amendment history—Endnotes 3 and 4

Amending laws are annotated in the legislation history and amendment history.

The legislation history in endnote 3 provides information about each law that has amended (or will amend) the compiled law. The information includes commencement details for amending laws and details of any application, saving or transitional provisions that are not included in this compilation.

The amendment history in endnote 4 provides information about amendments at the provision (generally section or equivalent) level. It also includes information about any provision of the compiled law that has been repealed in accordance with a provision of the law.

### Misdescribed amendments

A misdescribed amendment is an amendment that does not accurately describe the amendment to be made. If, despite the misdescription, the amendment can be given effect as intended, the amendment is incorporated into the compiled law and the abbreviation “(md)” added to the details of the amendment included in the amendment history.

If a misdescribed amendment cannot be given effect as intended, the abbreviation “(md not incorp)” is added to the details of the amendment included in the amendment history.

**Endnote 2—Abbreviation key**

ad = added or inserted	o = order(s)
am = amended	Ord = Ordinance
amdt = amendment	orig = original
c = clause(s)	par = paragraph(s)/subparagraph(s) /sub-subparagraph(s)
C[x] = Compilation No. x	pres = present
Ch = Chapter(s)	prev = previous
def = definition(s)	(prev...) = previously
Dict = Dictionary	Pt = Part(s)
disallowed = disallowed by Parliament	r = regulation(s)/rule(s)
Div = Division(s)	
exp = expires/expired or ceases/ceased to have effect	reloc = relocated
F = Federal Register of Legislation	renum = renumbered
gaz = gazette	rep = repealed
LA = <i>Legislation Act 2003</i>	rs = repealed and substituted
LIA = <i>Legislative Instruments Act 2003</i>	s = section(s)/subsection(s)
(md) = misdescribed amendment can be given effect	Sch = Schedule(s)
(md not incorp) = misdescribed amendment cannot be given effect	Sdiv = Subdivision(s)
mod = modified/modification	SLI = Select Legislative Instrument
No. = Number(s)	SR = Statutory Rules
	Sub-Ch = Sub-Chapter(s)
	SubPt = Subpart(s)
	<u>underlining</u> = whole or part not commenced or to be commenced



## Endnote 3—Legislation history

## Endnote 3—Legislation history

Name	Registration	Commencement	Application, saving and transitional provisions
<i>Carbon Credits (Carbon Farming Initiative) Rule 2015</i>	16 February 2015 (F2015L00156)	17 February 2015 (s 2)	
<i>Carbon Credits (Carbon Farming Initiative) Amendment Rule 2015 (No. 1)</i>	31 July 2015 (F2015L01201)	1 August 2015 (s 2)	
<i>Carbon Credits (Carbon Farming Initiative) Amendment (Extended Accounting Period) Rule 2016.</i>	9 February 2016 (F2016L00099)	10 February 2016 (s 2 in combination with s 2 of the <i>Carbon Credits (Carbon Farming Initiative—Source Separated Organic Waste) Methodology Determination 2016</i> (F2016L00098))	
<i>Carbon Credits (Carbon Farming Initiative) Amendment Rule 2017 (No. 1).</i>	14 July 2017 (F2017L00925)	Sections 1 to 4 and items 1 to 3 of Schedule 1: 15 July 2017 (s 2) Item 4 of Schedule 1: 17 February 2015 (s 2)	
<i>Carbon Credits (Carbon Farming Initiative) Amendment Rule (No. 2) 2017</i>	15 August 2017 (F2017L01039)	16 August 2017 (s 2)	
<i>Carbon Credits (Carbon Farming Initiative) Amendment Rule (No. 1) 2018</i>	1 May 2018 (F2018L00561)	Sections 1 to 4 and items 1 and 2 and 4 to 19 of Schedule 1: 2 May 2018 (s 2) Item 3 of Schedule 1: 13 December 2014 (s 2)	
<i>Carbon Credits (Carbon Farming Initiative) Amendment Rule (No. 2) 2018</i>	30 November 2018 (F2018L01642)	7 December 2018 (s 2)	

## Endnote 3—Legislation history

<b>Name</b>	<b>Registration</b>	<b>Commencement</b>	<b>Application, saving and transitional provisions</b>
<i>Carbon Credits (Carbon Farming Initiative) Amendment Rule (No. 1) 2019</i>	1 April 2019 (F2019L00504)	2 April 2019 (s 2)	Sections 120 and 121 of the <i>Carbon Credits (Carbon Farming Initiative) Rule 2015</i>
<i>Carbon Credits (Carbon Farming Initiative) Amendment (Variation of Project Proponents) Rule 2020</i>	3 June 2020 (F2020L00663)	4 June 2020 (s 2)	
<i>Carbon Credits (Carbon Farming Initiative) Amendment (Audit) Rule 2021</i>	21 June 2021 (F2021L00790)	22 June 2021 (s 2)	
<i>Carbon Credits (Carbon Farming Initiative) Amendment (Carbon Capture and Storage Projects) Rule 2021</i>	1 October 2021 (F2021L01378)	2 October 2021 (s 2)	
<i>Carbon Credits (Carbon Farming Initiative) Amendment (Soil Carbon Projects) Rule 2021</i>	2 December 2021 (F2021L01694)	3 December 2021 (s 2)	
<i>Carbon Credits (Carbon Farming Initiative) Amendment (Industrial and Commercial Emissions Reduction Projects) Rule 2021</i>	15 December 2021 (F2021L01787)	16 December 2021 (s 2)	
<i>Carbon Credits (Carbon Farming Initiative) Amendment (Blue Carbon Projects) Rule 2022</i>	19 January 2022 (F2022L00048)	20 January 2022 (s 2)	
<i>Carbon Credits (Carbon Farming Initiative) Amendment (Plantation Forestry) Rule 2022</i>	19 January 2022 (F2022L00045)	31 January 2022 (s 2)	Section 122 of the <i>Carbon Credits (Carbon Farming Initiative) Rule 2015</i>
<i>Carbon Credits (Carbon Farming Initiative) Amendment (Excluded Offsets Projects) Rule 2022</i>	1 April 2022 (F2022L00492)	2 April 2022 (s 2)	Section 125 of the <i>Carbon Credits (Carbon Farming Initiative) Rule 2015</i>

## Endnote 3—Legislation history

<b>Name</b>	<b>Registration</b>	<b>Commencement</b>	<b>Application, saving and transitional provisions</b>
<i>Carbon Credits (Carbon Farming Initiative) Amendment (Regeneration Projects) Rule 2022</i>	1 April 2022 (F2022L00503)	8 April 2022 (s 2)	Sections 123 and 124 of the <i>Carbon Credits (Carbon Farming Initiative) Rule 2015</i>

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**Endnote 4—Amendment history**

<b>Provision affected</b>	<b>How affected</b>
<b>Part 1</b>	
s 2	rep LA s 48D
s 4	am F2015L01201, am F2018L00561, am F2021L00790, am F2022L00048, am F2022L00503
s 4A	ad F2015L01201
s 4B	ad F2015L01201
s 5A	ad F2015L01201
s 6	rs F2016L00099, am F2021L01378
<b>Part 2</b>	
s 9	am F2017L00925, am F2018L00561
s 9AA	ad F2018L01642, am F2019L00504, am F2022L00503
s 9A	ad F2017L01039, am F2022L00045
s 9B	ad F2018L00561, am F2022L00048
<b>Part 2A</b>	
s 11A	ad F2015L01201
s 11B	ad F2015L01201
<b>Part 3</b>	
<b>Division 1</b>	
s 13	am F2015L01201, am F2017L01039, am F2018L00561, am F2021L00790, am F2022L00503
s 14	rep F2015L00156
<b>Part 3</b>	
<b>Division 2</b>	
<b>Subdivision B</b>	
s 20AA	ad F2022L00492
s 20AB	ad F2022L00492
s 20A	ad F2015L01201
s 20B	ad F2017L01039, am F2018L00561
s 20C	ad F2022L00503
s 21	ad F2015L01201
<b>Part 3</b>	
<b>Division 2A</b>	
<b>Subdivision A</b>	
s 22	ad F2015L01201
<b>Subdivision B</b>	
s 23	ad F2015L01201, am F2017L00925, am F2017L01039, am F2018L00561, am F2022L00503
s 24	ad F2015L01201, am F2017L00925, rs F2020L00663

## Endnote 4—Amendment history

<b>Provision affected</b>	<b>How affected</b>
s 25	ad F2015L01201
s 26	ad F2015L01201
s 27	ad F2015L01201
<b>Division 2B</b>	
<b>Subdivision A</b>	
s 28	ad F2015L01201
<b>Subdivision B</b>	
s 29	ad F2015L01201, am F2020L00663
s 30	ad F2015L01201, am F2020L00663
s 30A	ad F2018L00561
s 30B	ad F2018L00561
s 30C	ad F2018L00561
s 31	ad F2015L01201, am F2018L00561
<b>Subdivision C</b>	
s 32	ad F2015L01201
s 33	ad F2015L01201, am F2020L00663
s 34	ad F2015L01201
<b>Division 3</b>	
s 50	am F2015L01201
<b>Division 4</b>	
s 51	ad F2015L01201
s 52	ad F2015L01201
s 53	ad F2015L01201, am F2018L00561
s 54	ad F2015L01201
<b>Part 5</b>	
<b>Division 1</b>	
s 66A	ad F2017L00925
s 66B	ad F2017L00925
s 66C	ad F2018L00561
s 66D	ad F2021L01378, am F2021L01787
<b>Part 6</b>	
<b>Division 1</b>	
s 68A	ad F2021L01694
<b>Division 2</b>	
s 70	am F2018L00561, am F2018L01642, am F2019L00504, am F2021L00790, am F2022L00503
s 71	am F2018L01642, am F2019L00504, am F2021L00790
<b>Division 3</b>	
s 73	am F2021L00790
s 74	am F2018L01642, am F2021L00790

## Endnote 4—Amendment history

<b>Provision affected</b>	<b>How affected</b>
s 75	am F2021L00790
s 79A	ad F2018L01642, am F2019L00504, am F2022L00503
<b>Division 3A</b>	
s 80A	ad F2015L01201, am F2018L00561
s 80B	ad F2015L01201
<b>Part 7</b>	
s 88	ad F2015L01201
s 89	ad F2015L01201
<b>Part 9</b>	
s 90	ad F2015L01201
<b>Part 10</b>	
s 91	ad F2015L01201
<b>Part 11</b>	
s 92	ad F2015L01201
s 93	ad F2015L01201
<b>Part 15</b>	
s 94	ad F2015L01201
s 95	ad F2018L01642
<b>Part 18</b>	
s 102	ad F2015L01201
<b>Part 19</b>	
s 103	ad F2015L01201
<b>Part 26</b>	
s 112	am F2018L00561
s 113	am F2018L00561
<b>Part 29</b>	
<b>Division 1</b>	
s 120	ad F2019L00504
s 121	ad F2019L00504
s 122	ad F2022L00045
s 123	ad F2022L00503
s 124	ad F2022L00503
s 125	ad (md) F2022L00492