EXPLANATORY STATEMENT

Issued by the Authority of the Minister for the Environment

Carbon Credits (Carbon Farming Initiative) Act 2011

Carbon Credits (Carbon Farming Initiative) Rule 2015

Purpose

The *Carbon Credits (Carbon Farming Initiative) Act 2011* (CFI Act) enables the crediting of greenhouse gas abatement from emissions reduction activities across Australia. Greenhouse gas abatement is achieved either by reducing or avoiding emissions, or by removing carbon from the atmosphere and storing it.

The Carbon Credits (Carbon Farming Initiative) Rule 2015 (the Rule) details additional administrative procedures under the CFI Act, including information and audit requirements for project applications and reports, the fit and proper person test for participants, procedures for parts of the carbon abatement purchasing process, the length of reporting periods, and notification and record-keeping requirements.

The content of the Rule is largely based on previous regulations under the CFI Act, the *Carbon Credits (Carbon Farming Initiative) Regulations 2011* (the Regulations). The relevant sections of the Regulations are repealed upon commencement of the Rule.

Background to the Emissions Reduction Fund

In 2014, the Australian Government amended the CFI Act with the *Carbon Farming Initiative Amendment Act 2014* (CFI Amendment Act). The CFI Amendment Act established the Emissions Reduction Fund by expanding the crediting of emissions reductions under the Carbon Farming Initiative (CFI) to non-land based sectors of the Australian economy.

The Emissions Reduction Fund is the centrepiece of the Australian Government's efforts to reduce emissions. Its primary objective is to assist Australia to meet its emissions reduction target of five per cent below 2000 levels by 2020, consistent with its international obligations under the United Nations Framework Convention on Climate Change and the Kyoto Protocol.

The Emissions Reduction Fund will do this by purchasing approved and verified emissions reductions from registered projects. The CFI Act (as now amended by the CFI Amendment Act) empowers the Clean Energy Regulator to conduct processes to purchase emissions reductions, and enter into contracts for this purpose.

The CFI Amendment Act also streamlined the operation of the CFI to simplify making methodology determinations and encourage participation in the Emissions Reduction Fund.

Legislative rules and regulations supporting the CFI Act

The CFI Act is supported by subordinate legislation, including the Regulations. The Regulations provide detailed explanations of the way in which the CFI Act is administered by the Clean Energy Regulator.

Under the CFI Act, the Minister is empowered to make legislative rules (section 308); consistent with the intention that new subordinate legislation under the CFI Act will be in this

form. Over time, the Regulations will be transferred to sections of this instrument to create a full new rule set, which will help alleviate the workload of the Federal Executive Council.

As part of this process, those sections of the Regulations that no longer reflect the CFI Act will be repealed and remade by the Minister as sections in the Rule. The date of effect of repealed regulations will coincide with the making of the replacement sections in the Rule to ensure there is no overlap between the Regulations and the Rule.

The initial sections of the Regulations to be repealed and made as part of the Rule are those that support the Clean Energy Regulator to conduct the first auction under the Emissions Reduction Fund. The Government has indicated that this auction will be held in early 2015.

Detailed description of the Rule

Attachment A outlines and describes the sections in the Rule. A comparison table of the Rule and relevant repealed sections of the Regulations is included at Attachment B.

Public Consultation

Consultation was undertaken in December 2014 on the sections of the Regulations to be repealed and the replacement Rule to be made. An exposure draft of the Rule was released and stakeholders were invited to make written submissions. The Government also offered teleconference briefing sessions.

Separately, the Government undertook extensive public consultation on the Emission Reduction Fund policy framework (see Attachment C).

Regulatory Impact

In accordance with the *Australian Government Guide to Regulation*, the Department of the Environment certified the Emissions Reduction Fund White Paper as a Regulation Impact Statement for initial decisions on the Emissions Reduction Fund, including the Emissions Reduction Fund crediting and purchasing arrangements, CFI arrangements incorporated into the Emissions Reduction Fund, and coverage of the Emissions Reduction Fund safeguard mechanism. The Regulatory Impact Statement will be finalised after consultation with business on the remaining aspects of the safeguard policy.

Statement of compatibility with human rights

A statement of compatibility with human rights for the purposes of Part 3 of *the Human Rights (Parliamentary Scrutiny) Act 2011* is set out at Attachment D.

ATTACHMENT A

Details of the sections in the *Carbon Credits (Carbon Farming Initiative) Rule 2015*

Part 1 – PRELIMINARY

1, 2, 3 – Preliminary

These are the preliminary sections of the Rule. Section 2 provides for commencement on the day after the Rule is registered.

4 – Definitions

This section defines key concepts in the Rule. These concepts will be explained further in the relevant sections below. Key new concepts are the forward abatement estimate, monitoring requirements, project eligibility requirements and project requirements.

5 – Service of documents

This section allows for documents to be given to a nominee of multiple project proponents under the Rule. It is equivalent to section 137 of the CFI Act which applies in relation to documents required or permitted to be given under the Act.

6 – Extended accounting period

This section specifies an extended accounting period for eligible offsets projects under the *Carbon Credits (Carbon Farming Initiative—Alternative Waste Treatment) Methodology Determination 2015* in accordance with section 7A of the CFI Act. The extended accounting period for these eligible offsets projects is six years.

Under the *Carbon Credits (Carbon Farming Initiative—Alternative Waste Treatment) Methodology Determination 2015,* eligible offsets projects receive credits in equal portions over seven years subsequent to reporting eligible waste diversion activity.

Eligible offsets projects require an extended accounting period as the project will have credits that accrue after the end of the seven-year crediting period. The extended accounting period of six years begins after the end of the crediting period.

The result of the extended accounting period is that these projects will receive credits over a period of approximately 13 years. The time period is approximate due to flexible reporting provisions, outlined in section 76 of the CFI Act.

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

This section is made in relation to paragraph 13(1)(d) of the CFI Act. It is based on former regulation 2.1, which prescribed the form of the application required for a certificate of entitlement.

Under the CFI Act, proponents must be issued with a certificate of entitlement by the Clean Energy Regulator to receive Australian Carbon Credit Units. The certificate of entitlement specifies the number of credits to be issued and will only be issued if the Clean Energy Regulator is satisfied that certain requirements have been met.

The requirements under the Emissions Reduction Fund build on those under the CFI to ensure that the Clean Energy Regulator can administer its functions effectively. They also seek to ensure the Clean Energy Regulator has the information necessary for it to be satisfied that a certificate should be issued under section 15 of the CFI Act.

For example, an applicant must specify the carbon dioxide equivalent net abatement amount for the reporting period, and certify that the offsets report provided to the Clean Energy Regulator meets the legislative requirements.

The requirements under this section of the Rule are not substantially different from those under previous regulation 2.1 and reflect amendments to the CFI Act to implement the Emissions Reduction Fund.

8 – Form of application for certificate of entitlement—audit requirements

Paragraph 13(1)(e) of the CFI Act states that, if an application for a certificate of entitlement is subject to audit, it must be accompanied by an audit report that is prescribed by the legislative rules.

This section of the Rule requires that, if the offsets report for a reporting period is subject to audit, the audit report must accompany the application for a certificate of entitlement. This is part of the new risk-based approach to auditing under the Emissions Reduction Fund, as outlined by the Government in the Emissions Reduction Fund White Paper.

It clarifies that, while the offsets report and certificate of entitlement are both subject to audit under the amended CFI Act, only an audit of the offset report is required and must accompany the application for the certificate of entitlement.

Where an audit report covers a number of offset reports, it will be the final offsets report and certificate of entitlement that will be required to be accompanied by an audit report, and not each of the offsets reports leading up to that final report. For initial audits, the audit must, at a minimum, cover the six months prior to the date in the audit schedule. For subsequent audits, the audit must cover, at a minimum, the 12 months prior to the date in the audit schedule.

The concept of a single audit accompanying both the certificate of entitlement and offset report is consistent with previous regulation 1.11.

9 – Issue of certificate of entitlement—eligibility requirements

This section provides three additional eligibility requirements for the issue of a certificate of entitlement for the purposes of paragraph 15(2)(h) of the CFI Act.

Subsection 9(2) details the audit conclusions that are required in order to meet eligibility requirements for issuing a certificate of entitlement – namely a reasonable assurance conclusion or a qualified reasonable assurance conclusion. This section replaces previous regulation 1.11 and makes only minor changes to update cross-referencing.

Subsection 9(3) details that if a project changes such that regulatory approvals, within the meaning of section 5 of the CFI Act, are now required for a project, but were not dealt with in the original application, they need to be obtained. This is a new provision that ensures that the intent of section 28 and paragraph 15(2)(e) of the CFI Act to require all regulatory approvals to be obtained for a project, is not undermined by a change in the project after declaration.

Subsection 9(4) details that the government programme requirement must have been complied with during the reporting period. This applies to both existing and new eligible offset projects.

Part 2A – PURCHASE OF ELIGIBLE CARBON CREDIT UNITS BY THE COMMONWEALTH

10 – Duration of carbon abatement contracts

Section 20CA of the CFI Act enables the Minister to make legislative rules regarding matters which the Clean Energy Regulator must have regard to when setting the duration of a proposed carbon abatement contract. This section of the Rule, which has no equivalent previous regulation, gives effect to section 20CA of the CFI Act and implements the Government's policy framework for the Emissions Reduction Fund.

Paragraph 10(a) states that the standard duration of a carbon abatement contract under the Emissions Reduction Fund should not exceed seven years. This allows the duration of a contract to be aligned with the standard crediting period of seven years, and will provide participants with greater certainty and encourage greater participation in the Emissions Reduction Fund.

Where a project has a crediting period which exceeds seven years, the Clean Energy Regulator may consider a longer contract duration to support activities which are likely to remain additional to business as usual over a longer period of time. This principle is reflected in paragraph 10(b).

In addition to those matters specified in section 20CA of the CFI Act, paragraph 10(c) of this section specifies that the Clean Energy Regulator must also have regard to the principle that where a longer duration carbon abatement contract is considered appropriate, the longer duration awarded should not exceed ten years. This principle aligns longer carbon abatement contracts with a ten year crediting period which may be available to large projects that are likely to remain additional beyond seven years.

11 – Conduct of carbon abatement purchasing process

Paragraph 20G(2)(b) of the CFI Act provides that, in conducting carbon abatement purchasing processes, the Clean Energy Regulator must have regard to matters as specified in the legislative rules.

The intent of this section is to clarify the types of purchasing process matters the Clean Energy Regulator may publish guidelines on, and subsequently have regard to, in conducting a purchasing process. This section is intended to emphasise the importance of, and weight given to, any guidelines published under section 20G of the Act. However it does not make those guidelines into a legislative instrument.

This is a new section with no equivalent regulation that implements the Government's policy framework for the Emissions Reduction Fund.

Part 3 – ELIGIBLE OFFSETS PROJECTS

Division 1 – Application for declaration of eligible offsets project

Subdivision A – Preliminary

12 – Operation of this Division

Paragraphs 23(1)(c) and 23(1)(h) of the CFI Act state that an application for declaration of an eligible offsets project must be accompanied by such information and documents as specified in the regulations or legislative rules.

This Division replaces several previous regulations, and makes minor revisions to the content of those regulations to remove and update redundant or outdated terminology. It also ensures that information and documents reflect provisions in the CFI Act following the amendments made to it by the CFI Amendment Act 2014.

Subdivision B – General information and document requirements

13 – Information and documents to accompany application

This section sets out the information that must accompany an application for the declaration of an offsets project. It replaces previous regulation 3.1, and seeks to ensure that redundant provisions and terminology are removed, and requested information aligns with the streamlined application process under the Emissions Reduction Fund.

In contrast to the CFI, only applications that relate to area-based offsets projects are now required to provide a geospatial map of their project area. This will lessen the reporting burden associated with non-area based projects, such as energy efficiency projects, that would have otherwise had to provide such a map.

Another important change is that all applications must provide, unless advised otherwise by the Clean Energy Regulator, a forward abatement estimate for the project. This estimate is required to determine the audit schedule for the project. The Rule does not prescribe how this should be determined, but it is expected that the project proponent will provide their best estimate of the total carbon abatement over the crediting period (including any extended accounting period) measured in tonnes of carbon dioxide equivalent.

Under paragraph 13(1)(d), the application must also outline any ‘sub-methods’ that will be used for the project. This paragraph is intended to cover choices in methodology determinations that are specifically labelled as ‘sub-methods’. It does not cover other minor choices about the manner in which the determinations are applied, such as the use of direct measurement or default values in a calculation.

14 – Information to accompany certain Emissions Reduction Fund transitional applications

This section makes clear that if projects transitioning from the CFI seek to backdate their declaration to a date before the project is declared an eligible offsets project, the application should make clear that the project conformed to the applicable CFI methodology determination from the earlier date.

For instance, if a reforestation project is to have started on 1 July 2010, the project must have complied with all of the requirements of that determination from that date. This is consistent with the framework for backdating and the requirements of previous subregulation 3.1(2). Backdating is not relevant for other applications.

Subdivision C – Information and documents required to establish applicant's identity

15 – Information required to establish applicant's identity

This section sets out the information required to accompany an application for the declaration of an eligible offsets project. It replaces regulations in Division 4.1 of the Regulation, but makes no substantive changes to the content of those regulations. The information will assist the Clean Energy Regulator to verify that the proponent is the person who they claim to be and is a fit and proper person.

16 – Documents required to establish applicant's identity

This section sets out the documents required to accompany an application for the declaration of an eligible offsets project. It replaces regulations in Division 4.1 of the Regulation relating to documents that establish an applicant's identity, and make only minor changes to the content of those regulations.

In particular, subsection 16(2) and 16(3) avoids information being provided twice in the same way as previous regulation 4.3.

17 – Form etc. of documents

This section sets out the form of documents required to accompany an application for the declaration of an eligible offsets project. It replaces previous regulations in Division 4.1 of the Regulation, but makes no changes to the content of those regulations.

18 – Aboriginal persons or Torres Strait Islanders

This section sets out the requirements that apply where an Aboriginal or a Torres Strait Islander person does not have specified documents for an application for the declaration of an eligible offsets project. It replaces previous regulations in Division 4.1 of the Regulation such as regulation 4.7, but makes no changes to the content of those regulations.

Division 2 – Declaration of eligible offsets project

Subdivision A – Content of declaration

19 – Identification of project area

Paragraph 27(3)(b) of the CFI Act states that the project declaration must include the project area(s) if the project is an area based project: a sequestration project or a type of area-based emissions avoidance offsets project as identified in regulations or legislative rules. This section lists the information that the Clean Energy Regulator must provide in their declaration.

This section replaces the previous regulation 3.3, but makes no changes to the content of that regulation.

Subdivision B – Criteria for declaration

20 – Eligibility requirements – consent

Paragraph 27(4)(l) of the CFI Act states that the Clean Energy Regulator must not declare that the offsets project is an eligible offsets project unless the Clean Energy Regulator is

satisfied that the project meets the eligibility requirements (if any) specified in the regulations or the legislative rules.

This section of the Rule lists the conditions under which, for projects involving carbon abatement at a facility, the consent of the person who has operational control of the facility must be sought. This is a new rule to give effect to the double counting provisions in the safeguard mechanism to be inserted into the *National Greenhouse and Energy Reporting Act 2007*.

Consent of the operator is necessary as the issue of credits at a safeguard facility will impact the calculation of whether or not a facility keeps its net emissions below its baseline in each financial year. Consent is not required where the person with operational control is a project proponent for the project.

After the safeguard mechanism commences from 1 July 2016, it is intended a similar provision would be included in the eligibility for a certificate of entitlement in circumstances where the operational control of a facility may have changed since a declaration.

21 – Additionality requirement - requirements in lieu of government programme requirement

Subparagraph 27(4A)(c)(ii) of the CFI Act states that requirements in lieu of the government programme requirement will be specified in legislative rules. The intent of this section is to provide clarity on the way in which the government programme requirement will be implemented and administered under the CFI Act. The requirements are intended to ensure that emissions reductions are not paid for twice, and are an important part of the additionality framework established under the Emissions Reduction Fund.

This section sets out the requirements in lieu of the CFI Act.

Under subsection 21(2), projects must not include specified activities under state or territory government energy efficiency legislation and the *Renewable Energy (Electricity) Act 2000*. This is intended to be activities that create credits or are used for compliance under state energy efficiency schemes. These requirements enable potential participants to choose whether to apply for support under the Emissions Reduction Fund or the specified government programme.

Further, projects that primarily involve the avoidance of methane emissions, such as landfill gas, wastewater, alternative waste treatment, piggeries and coal projects, are an exception to the specified activities under the *Renewable Energy (Electricity) Act 2000*. These projects are only credited for the destruction of methane and not in relation to their renewable electricity generation.

Subsection 21(3) describes that, if the methodology determination excludes a scheme listed in subsection 21(2) from the calculation of credits, the renewable energy or credited energy efficiency activity can still be undertaken at the same site as a project. This also includes where the activity has only a minor or trivial impact on the carbon dioxide equivalent net abatement amount.

Subsection 21(4) provides that solar water heaters and small generation units explicitly excluded from the *Renewable Energy (Electricity) Act 2000* through regulations under that Act, such as those not meeting Australian standards, could not be part of a project under the CFI Act. This ensures consistency between both Acts which are administered by the same entity, the Clean Energy Regulator. The relevant regulations are adopted as in force from time to time to ensure the requirements remain consistent over time.

Under subsection 21(5), projects must not receive funding under specified Commonwealth, state and territory government programmes and schemes. Programmes listed are those that have been identified as:

- providing upfront direct grant funding,
- having a significant overall programme funding allocation, and
- supporting activities that are considered to substantially overlap with the Emissions Reduction Fund, regardless of the objective of the programme.

Consistent with this framework, the Rule lists the Commonwealth's 20 Million Trees Programme.

The government programme requirements only apply to the particular activities relating to the Emissions Reduction Fund offsets project. This means that the requirements do not preclude projects which seek to expand on activities, for which the original project may have been previously funded under a specified programme.

If a project subsequently breaches the requirements of this section of the Rule, it would be expected to report this under section 87 of the Rule as well as include this in offsets reports under paragraph 70(3)(a) of the Rule. In addition, under subsection 9(4) of the Rule, continuing compliance with section 21 is an eligibility requirement for a certificate of entitlement.

The Government intends to keep this section of the Rule under review as programmes evolve over time. The objective of any such reviews would be to ensure that the additionality framework under the Emissions Reduction Fund is not eroded. Further programmes could be added, including if they meet the above criteria.

Division 3 – Types of projects

50 – Area-based emissions avoidance projects

Paragraph 27(3)(b) of the CFI Act states that a project declaration must include the project area(s) if the project is an area based project: a sequestration project or a type of area-based emissions avoidance offsets project as identified in regulations or legislative rules.

This section defines 'area-based projects' as: (a) savanna burning projects and (b) other projects where it is necessary to determine the size of the project area to work out the carbon dioxide equivalent net abatement amount for the project. This is limited to where the methodology determinations expressly reference the project area for this purpose, as opposed to where an area is incidentally relevant to the calculation but is not described as the 'project area' within the meaning of the CFI Act.

This is consistent with the test in previous subregulation 3.1(6).

Part 4 – FIT AND PROPER PERSON TEST

Division 1 – Events that have happened

60 – Operation of this Division

Subparagraphs 60(1)(a)(i), 60(2)(a)(i) and 60(2)(a)(ii) of the CFI Act state that the key details of the fit and proper person test are detailed in the legislative rules. This part sets out the key

tests, including whether an applicant has been convicted of specified offences, has breached a environment law, is insolvent, or is under administration. These must be considered in whether a person satisfies the fit and proper person test.

The CFI required applicants to satisfy identity and probity checks in order to become a 'recognised offsets entity', which was a precondition to participating. Under the Emissions Reduction Fund, the concept of a recognised offsets entity has been removed to streamline processes. The identity and probity checks are retained in the form of the fit and proper person test.

Proponents must satisfy this test as part of the project declaration process under paragraph 27(4)(f) of the CFI Act and when being issued a certificate of entitlement under paragraph 15(2)(a) of the CFI Act.

This Part replaces previous regulation 4.11 and the substance of Part 4 of the CFI Act but retains the content of those provisions.

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

This section lists the events applying to individuals, bodies corporate and executive officers of bodies corporate, which the Clean Energy Regulator must have regard to in considering the fit and proper person test.

Subsection 61(2) makes clear that the list of events it not intended to limit, by implication, the breadth of potential events which the Regulator may consider relevant under paragraph 61(1)(k).

62 – Events for individuals

This section lists additional events relating to foreign laws applying to individuals which the Clean Energy Regulator must have regard to in considering the fit and proper person test.

63 – Events for bodies corporate

This section lists additional events relating to foreign laws applying to bodies corporate which the Clean Energy Regulator must have regard to in considering the fit and proper person test.

64 – Events for executive officers of bodies corporate

This section lists additional events relating to foreign laws applying to executive officers of bodies corporate which the Clean Energy Regulator must have regard to in considering the fit and proper person test.

Division 2 – Other matters

65 – Operation of this Division

This Division of the Rule specifies other matters which the Clean Energy Regulator must have regard to in considering the fit and proper person test for individuals and bodies corporate.

66 – Other matters for individuals and bodies corporate

This section specifies a number of matters which are relevant to the Clean Energy Regulator in applying the fit and proper person test. In particular, the Clean Energy Regulator will

consider the circumstances surrounding a single event, series of events or pattern of behaviour which may not itself qualify as an event under Division 1.

There could be a range of patterns of behaviour by an individual, body corporate or executive officer which may need to be considered by the Clean Energy Regulator. An example of this would be enforceable undertakings. The Clean Energy Regulator would consider any circumstances where the applicant has entered into an enforceable undertaking in the past with a regulatory body, including the Clean Energy Regulator itself, when deciding whether a person passes the fit and proper person test. An enforceable undertaking that is considered by the Clean Energy Regulator could be, for example, where an applicant is applying to register an energy efficiency project, and within the past three years that applicant has been required to enter into an enforceable undertaking for failing to use a licensed electrician to carry out electrical work. If that undertaking was preceded by a number of enforcement actions around the same or similar matters the Clean Energy Regulator may decide that person is not fit and proper.

Part 6 – REPORTING AND NOTIFICATION REQUIREMENTS

Division1 – Minimum length of first and subsequent reporting periods

67 – Operation of this Division

This Division specifies the minimum number of months applicable to an offsets report for the purposes of subparagraphs 76(1)(c)(ii) and (2)(c)(ii) of the CFI Act.

68 – Minimum number of months applicable to offsets reports

Subparagraphs 76(1)(c)(ii) and 76(2)(c)(ii) of the CFI Act state that the legislative rules may specify a lesser number of months than the standard period (six months) for the first and subsequent reporting periods.

Proponents can submit reports as frequently as every month if they are reporting on generated abatement of more than 2000 tonnes of carbon dioxide equivalent in the previous month. Similarly, if more than 2000 tonnes of carbon dioxide equivalent is abated in a period of three months, a project could report every three months.

The intention of this section is to create more flexibility for participants in reporting without obliging the Clean Energy Regulator to process large numbers of reports for a small amount of abatement.

This is a new section with no equivalent previous regulation that implements the Government's policy framework for the Emissions Reduction Fund.

Division 2 – General requirements for offset reports

69 – Manner and form of offsets reports

Paragraph 76(4)(a) of the CFI Act states that an offsets report about a project for a reporting period must be given in the manner and form prescribed in the regulations or legislative rules.

Under the CFI, previous regulation 6.1 specified the manner and form required for offsets reports that are submitted to the Clean Energy Regulator to receive credits. Requirements for

these offsets reports are streamlined and specified in this section of the Rule to minimise the reporting burden on proponents.

Key reporting requirements that have been retained include the project identifier, the applicable methodology determination, and the net abatement amount achieved from the project.

Some new reporting requirements are included to ensure that proponents provide adequate information where the project has been divided into multiple areas, and to ensure that adequate information is reported for audit purposes.

One further requirement has been included to give effect to the double counting rule in the context of the safeguard mechanism. It requires proponents to indicate if any of the reported carbon dioxide equivalent net abatement amount occurred at a safeguard facility in a monitoring period and if so, how much abatement occurred at each relevant safeguard facility. The detailed design of the safeguard mechanism will be subject to further consultation with businesses before it commences on 1 July 2016.

These changes will facilitate participation in the Emissions Reduction Fund and allow the Clean Energy Regulator to perform its functions effectively.

Regulation 6.1 of the previous Regulation is repealed.

70 – Information that must be set out in offsets reports

Paragraph 76(4)(a) of the CFI Act states that an offsets report for a reporting period must set out the information specified in the regulations or legislative rules. The Government intends that requirements for offsets reports will be streamlined and specified in legislative rules, to minimise the reporting burden on proponents.

This section replaces previous regulations 6.2 and 6.3, and sets out the key information to be included in an offsets report. A key change from arrangements under the CFI is that it is not necessary to include in each offsets report every calculation used in determining the carbon dioxide equivalent net abatement amount. Instead, the last or final calculation which results in the carbon dioxide equivalent net abatement amount should be reported.

For instance, if the carbon dioxide equivalent net abatement amount is A + B + C = D, with D being the final carbon dioxide equivalent net abatement amount, then only the values for A, B, C and D would need to be reported, and not the underlying equations that arrived at them. An example of this could be the net abatement amount from commercial buildings A, B and C resulting in the total sum of carbon dioxide equivalent net abatement amount D. It is not necessary to report all the underlying calculations for each commercial building individually, although it is important to note that these underlying calculations must be kept as records.

The Clean Energy Regulator may also publish guidelines of other significant equations if these are necessary to help ensure that the carbon dioxide equivalent net abatement amount has been properly calculated. Project proponents must also include a statement that all inputs used to determine the carbon dioxide equivalent net abatement amount are accurate, even if those inputs are not reported in the offsets report.

Subsection 70(3) provides for additional information where there are changes to a project. These are linked to the auditing requirements and an audit may need to look into these matters where they are identified. Paragraph (a) concerns changes to the extent or manner of a project's compliance with project eligibility requirements. For example, if the process used by the proponent changes for ensuring relevant disposal requirements in a methodology determination are complied with, that would need to be included in the offsets report.

Paragraphs (b) and (c) concern significant changes in the scope or location of a project. This is intended to include the project being carried out at a greater number of sites as well as at sites not indentified in the application for a section 27 declaration. Paragraph (d) concerns the use of a different 'sub-method' as defined in a determination. Paragraph (e) concerns material changes to the kinds of activities undertaken by a project, such as the project involving changes to cooling systems in a building rather than just changes to lighting.

Subsection 70(4) deals with the carbon abatement attributable to safeguard facilities after 1 July 2016 for the purposes of the double counting provisions of under relevant legislation.

71 – Documents that must accompany offsets reports

Paragraph 76(4)(d) of the CFI Act states that an offsets report about a project for a reporting period must set out the information specified in the regulations or legislative rules. This section replaces previous regulation 6.4, with minor amendments to reflect the Government's intent that requirements for offsets reports will be streamlined and specified in legislative rules to minimise the reporting burden on proponents.

This section ensures that if a report only covers part of an area-based offsets project, a scale map identifying the relevant part of the project must be included.

Division 3 – Audit reports to accompany offsets reports

Subdivision A – Operation of this Division

72 – Operation of this Division

Paragraphs 76(4)(c), 76(4)(ca) and 76(4)(cb) of the CFI Act state that, if legislative rules require an offsets report to be subject to an audit, the offset report must be accompanied by an audit report in accordance with the legislative rules. Division 3 of the Rule sets out the risk-based approach to auditing emissions reductions, and specifies the level of assurance, frequency and scope of the audit report that must be provided with offset reports for different types of projects.

Under the CFI, all project reports were required to be accompanied by a reasonable assurance audit report, with minor exceptions in regulations. The intent of the new rules in this Division is to implement a risk-based approach to auditing to minimise regulatory burden on project proponents, and make it easier and less costly to participate in the Emissions Reduction Fund.

This Division replaces previous regulations 1.11 – 1.13 and regulation 2.2, with changes to reflect the risk-based approach to audit.

Subdivision B – Audit schedules

73 – Audit schedules

If a project is declared an eligible offsets project, the Clean Energy Regulator must give an audit schedule for the project to the project proponent following declaration.

The schedule must set out the number of audits, and the period of time covered by each subsequent audit. The audit period will enable the project proponent to determine whether each offsets report they submit needs to be accompanied by an audit report. Generally, it will be the first offsets report after the end of an audit period that will need to be accompanied by an audit report.

Subsection 73(4) ensures that projects currently in operation are also provided with an audit schedule. Subsection 75(9) requires forward abatement estimates to be provided to the Clean Energy Regulator within 60 days of commencement of the Rule to facilitate this.

Subsection 73(5) allows for the Clean Energy Regulator to vary an audit schedule in limited circumstances. Generally the consent of the project proponent is required. The Clean Energy Regulator may also amend an audit schedule to remove an audit under subsection 77(4) or if the audit thresholds instrument is amended, to require fewer audits for certain classes of projects.

Subdivision C – Scheduled (initial and subsequent) audits

74 – Initial audits

This section details the scope and the period of time to be covered by the initial audit. An initial audit is the first scheduled audit for an eligible offsets project.

The initial audit scope will cover the declaration of an eligible offsets project, the methodology determination used for the project, the offsets report, and all other matters relating to the establishment and operation of the project in accordance with the CFI Act and the relevant method. In considering whether the relevant offsets reports for the audit period have been prepared in accordance with section 76 of the Act, the audit will provide assurance over the carbon dioxide equivalent net abatement amount contained in those reports.

The initial audit must cover a minimum of six months, and if the reporting period is longer, the audit must cover the entire reporting period. In circumstances where a number of offsets reports are submitted during the initial six month period, the audit report should be submitted with the last offset report but look back at the results of each offset report already submitted to the Clean Energy Regulator, in accordance with paragraph 74(2)(c).

Transitioning projects from the CFI are not required to provide an initial audit if they have provided an audit report before the commencement day.

75 – Subsequent audits - number

This section describes the number of subsequent audits required for an eligible offsets project. This section also sets out the instances in which the Clean Energy Regulator may reduce or vary the number of audits.

The number of audits will be determined using a risk-based approach, consistent with the Government's policy framework for the Emissions Reduction Fund. The key risk determinant will be project size in terms of expected abatement over the course of the crediting period (the 'forward abatement estimate'). Accordingly, the forward abatement estimate will be used to determine number of audits required.

Project size thresholds will be maintained in the audit thresholds instrument, which will be a legislative instrument made by the Clean Energy Regulator.

76 – Subsequent audits - scope

This section sets out the required scope of audits which are subsequent to the initial audit.

Subsequent audits will provide assurance over the carbon dioxide equivalent net abatement amount provided in the offsets report under section 76 of the CFI Act. Unlike previous CFI arrangements where all audits were similar to an initial audit, these audits are intended to be more focused on the key issue of crediting and any significant changes since the last audit of

a project. This is intended to reduce the regulatory burden for businesses participating in the Emissions Reduction Fund.

The section details the reasons why the scope of a subsequent audit may be increased, and the period of time to be covered by a subsequent audit. Reasons for increasing the scope of a subsequent audit may include issues raised under previous audits (e.g. qualified audits), use of a different methodology determination, technology in early commercialisation or not widely used in Australia, or a methodology that is not widely used.

Subsequent audits can cover no less than 12 months, and if the reporting period is longer, the audit is likely to cover the entire reporting period.

Subdivision D – Triggered audits

77 – Threshold audits

This section sets out the circumstances which trigger a 'threshold audit', and the scope of this audit.

The scope of unscheduled audits – threshold audits, variance audits (section 78) and qualified or other conclusion audits (section 79) – will be similar to that of the subsequent audit. The Clean Energy Regulator may choose to limit or reduce this scope depending on the reason for the unscheduled audit trigger.

The intent of this section is to ensure that where a reporting period covers a substantial abatement amount, the accompanying offsets report can be audited. The section states that threshold audits may replace a subsequent audit, and sets out the matters which the Clean Energy Regulator must have regard to in determining whether or not to remove a subsequent audit.

78 – Variance audits

This section sets out the circumstances which trigger a 'variance audit', and the scope of this audit.

The intent of this section is to ensure that where the abatement amount for a reporting period for the project is significantly different to what is expected, as set out in the audit thresholds instrument, an audit can occur.

79 – Qualified or other conclusion audits

This section states that where a previous audit did not give a reasonable assurance conclusion about a matter, the Clean Energy Regulator may request an audit report for a specified offsets report. The scope of a qualified or other conclusion audit is also set out in this section.

Subdivision E – Conduct of audits

80 – Conduct of audits

This section is equivalent to regulation 1.12(2) of the Regulations.

It states that audits must be conducted in accordance with the *National Greenhouse and Energy Reporting (Audit) Determination 2009*. All audits need to provide a reasonable assurance or qualified reasonable assurance opinion to be eligible for a certificate of entitlement under subsection 9(2).

However, unlike the CFI requirements, other audit conclusions may be submitted with an offsets report even though credits would not then be issued.

There is no change to who can conduct an audit.

Division 4 – Notification requirements

Subdivision A – Significant reversals

81 – Significant reversals relating to natural disturbances & 82 – Significant reversals relating to conduct

These sections outline requirements pursuant to sections 81 and 82 of the CFI Act (which apply to sequestration offsets projects) that participants in the Emissions Reduction Fund notify the Clean Energy Regulator of certain matters and when certain events take place. Regulation 6.10 is repealed and replaced with these sections.

Specifically, these sections define a significant reversal and provide that proponents must notify the Clean Energy Regulator of a significant reversal in the amount of carbon dioxide removed from the atmosphere from the relevant sequestration offsets project.

A significant reversal is defined under section 81 of this Rule as one which occurred on at least 5 per cent of the project area, or project areas in total. This definition is consistent with that in regulation 6.10, but removes the alternative option of defining a significant reversal as one which occurred on at least 50 hectares of the project area, whichever area is the smaller. This change has been made to ensure consistent treatment across sequestration projects for reversals which are caused by a natural disturbance.

For significant reversals relating to conduct, addressed at section 82 of the Rule, the definition of a significant reversal retains the 50 hectare option and therefore replicates the definition in regulation 6.10.

The definition of relevant sequestration offsets project remains unchanged from the CFI Act.

Subdivision B – Other notification requirements

Sections 83 to 87 set out requirements for project proponents to notify the Clean Energy Regulator of certain matters, and are made for subsection 85(2) of the CFI Act.

83 – Operation of this Subdivision

These sections replace and build on the notification requirements contained in regulation 6.11. The notification requirements will assist the Clean Energy Regulator to identify key information at a point in time and address any issues which are identified.

To assist the Clean Energy Regulator to identify issues, the Rule specifies requirements to notify the Clean Energy Regulator of information about compliance with project eligibility requirements and which can affect the number of Australian Carbon Credit Units to be issued for a particular project.

84 – Changes relating to project proponent

The proponent must notify the Clean Energy Regulator, in the approved form, of any change to the proponent's name, business name or trading name, or the proponent's contact details within 30 days of the change occurring.

This replaces subregulation 6.11(4).

85 – Errors in offsets reports

If the project proponent discovers certain errors in an offsets report, the project proponent must give the Clean Energy Regulator written notice of the error within 60 days of the discovery. The errors for which notification is required include an error in relation to the eligibility of the project, or an error in relation to the carbon dioxide equivalent net abatement amount or the carbon dioxide equivalent net sequestration amount of a size that affects the number of Australian Carbon Credit Units generated.

This replaces subregulation 6.11(2).

86 – Acts causing reversal of removal of carbon dioxide

If the project proponent engages in an act that causes, or is likely to cause, a reversal of the removal of carbon dioxide from the atmosphere, in a significant proportion of the project area, the project proponent must give the Clean Energy Regulator written notice of the act within 60 days of committing it. The reversal must have occurred in an area that is at least five per cent of the project area or combined project areas; or an area that is at least 50 hectares of the project area or areas for this requirement to be triggered.

This replaces subregulation 6.11(3).

87 – Changes relating to operation of project

If a project proponent discovers that the project has been operated in a way that is likely to result in the revocation of the declaration of the eligible offset project under subsection 35(1) of the CFI Act, the project proponent must give the Clean Energy Regulator written notice within 60 days of the situation becoming apparent. This ensures that timely action can be taken under section 35 of the CFI Act to revoke a declaration of eligible offsets project if necessary. Project proponents may also choose to engage with the Clean Energy Regulator on measures they plan to take to rectify the issues identified.

This requirement is additional to those listed under regulation 6.11.

Part 17 – RECORD-KEEPING AND PROJECT MONITORING REQUIREMENTS

100 – Record-keeping requirements—general

Section 191 of the CFI Act provides that legislative rules may require a person to keep records.

Under the CFI, proponents must record certain information in relation to a project. These requirements ensure that the Clean Energy Regulator and auditors can verify abatement calculations and that projects continue to meet certain legal requirements. Under the Emission Reduction Fund, requirements will be streamlined and specified in legislative rules, and accompanied by guidelines published by the Clean Energy Regulator.

The streamlined requirements seek to minimise the record-keeping burden on proponents, while ensuring that the Clean Energy Regulator is able to perform its regulatory functions effectively. For instance, paragraph 17.1(2)(e) of the Regulations required information about any variation of the project to be recorded. In contrast, paragraph 100(2)(f) only requires information in relation to ‘significant change to the scope or location of a project’.

Provisions in subsection 100(4) will ensure that records kept under previous requirements will need to be kept until they can be disposed of consistent with this section.

Regulations 17.1 and 17.2 are repealed and replaced with these new rules.

101 – Record-keeping requirements—preparation of offsets report

This is equivalent to regulation 17.2 and, as with section 100, includes a provision under subsection 101(3) that ensure records required to be kept under the previous regulation are retained for the requisite period.

Part 26 – EMISSIONS REDUCTION ASSURANCE COMMITTEE

110 – Operation of this Part

This Part of the Rule sets out the procedures to be followed at, and other matters relating to, meetings of the Emissions Reduction Assurance Committee, in addition to those outlined in the CFI Act.

This part is consistent with Part 26 of the Regulations and reflects minor changes to implement the Emissions Reduction Fund, including the replacement of the Domestic Offsets Integrity Committee with the Emissions Reduction Assurance Committee.

111 – Procedure at meetings

Section 111 outlines the procedure to be followed at meetings of the Emissions Reduction Assurance Committee, including requirements for convening a meeting and taking minutes.

This section replaces regulation 26.2 and makes no substantive changes to its operation.

112 – Quorum at meetings

This section states that the minimum number of members of the Emissions Reduction Assurance Committee present in order for a meeting to proceed is four. One of the four members present must be the Chair.

Under previous regulation 26.3, the requisite quorum was three members. This has been increased under this section of the Rule to reflect the increased membership of the Emissions Reduction Assurance Committee relative to the previous Domestic Offsets Integrity Committee. Membership was increased given the greater breadth of expertise required of the Emissions Reduction Assurance Committee when considering methods that apply across the economy.

To ensure that meetings are not impeded by the operation of section 262 of the CFI Act, which requires that members not be present or take part in deliberations in which they have an interest, the requisite quorum when this section applies is three members.

113 – Presiding at meetings

This section states that the Chair of the Emissions Reduction Assurance Committee must preside at all meetings. This differs to previous regulation 26.4, which allowed an acting Chair to be appointed.

If the member excluded from a meeting under section 262 of the CFI Act is the Chair, section 113 of the Rule states that a Chair may be appointed from the members remaining in order that the meeting can continue.

114 – Manner of deciding questions

This section states that any questions arising at a meeting of the Emissions Reduction Assurance Committee will be resolved by resolution and outlines the requirements for a resolution to be passed.

This is equivalent to the requirements under previous regulation 26.5.

Schedule 1 – Documents required to establish applicant's identify

This replicates the requirements in Schedules 2 and 3 of the Regulations.

ATTACHMENT B

Comparison of the Rule to regulations being repealed

Section of the Rule	Name of section	Previous regulation	Relevant section of amended CFI Act
1	Name	1.1	308
2	Commencement	1.2	308
3	Authority	N/A	308
4	Definitions	1.3	308
5	Service of documents	N/A	137
6	Extended accounting period	N/A	7A(1)
7	Form of application for certificate of entitlement—information to accompany application	2.1	13(1)(d)
8	Form of application for certificate of entitlement—audit requirements	1.11	13(1)(e)
9	Issue of certificate of entitlement—eligibility requirements	1.11	15(2)(h)
10	Duration of carbon abatement contracts	N/A	20CA(1)(a)
11	Conduct of carbon abatement purchasing process	N/A	20G(2)(b)
12	Operation of this Division	3.1	23(1)(c) and (h)
13	Information and documents to accompany application	3.1	23(1)(c) and (h)
14	Information to accompany certain Emission Reduction Fund transitional applications	3.1(2)	23(1)(c) and (h)
15	Information required to establish applicant's identity	4.5	23(1)(c) and (h)
16	Documents required to establish applicant's identity	4.6, 4.3	23(1)(c) and (h)
17	Form etc. of documents	4.4	23(1)(c) and (h)
18	Aboriginal persons or Torres Strait Islanders	4.7	23(1)(c) and (h)
19	Identification of project area	3.3	27(3)(b)

Section of the Rule	Name of section	Previous regulation	Relevant section of amended CFI Act
20	Eligibility requirements—consent	N/A	27(4)(l)
21	Additionality requirements—requirements in lieu of government programme requirement	N/A	27(4A)(c)(iii)
50	Area based emissions avoidance projects	N/A	53A(1)
60	Operation of this Division	4.11, 4.12	60(1)(a)(i), (2)(a)(i) and (2)(a)(ii)
61	Events for individuals, bodies corporate and executive officers of bodies corporate	4.11, 4.12	60(1)(a)(i), (2)(a)(i) and (2)(a)(ii)
62	Events for individuals	4.11, 4.12	60(1)(a)(i), (2)(a)(i) and (2)(a)(ii)
63	Events for bodies corporate	4.11, 4.12	60(1)(a)(i), (2)(a)(i) and (2)(a)(ii)
64	Events for executive officers of bodies corporate	4.11, 4.12	60(1)(a)(i), (2)(a)(i) and (2)(a)(ii)
65	Operation of this Division	N/A	60(1)(a)(ii) and (2)(a)(iii)
66	Other matters for individuals and bodies corporate	N/A	60(1)(a)(ii) and (2)(a)(iii)
67	Operation of this Division	N/A	76(1)(c)(ii) and 2(c)(ii)
68	Minimum number of months applicable to offsets reports	N/A	76(1)(c)(ii) and 2(c)(ii)
69	Manner and form of offsets reports	6.1	76(4)(a)
70	Information that must be set out in offsets reports	6.2	76(4)(a)
71	Documents that must accompany offsets reports	6.4	76(4)(a)
72	Operation of this Division	1.11 and 1.12	76(4)(c), (ca) and (cb)
73	Audit schedules	1.12	76(4)(c), (ca) and (cb)
74	Initial audits	1.12	76(4)(c), (ca) and (cb)
75	Subsequent audits—number	1.12	76(4)(c), (ca) and (cb)
76	Subsequent audits—scope	1.12	76(4)(c), (ca) and (cb)
77	Threshold audits	1.12	76(4)(c), (ca) and (cb)

Section of the Rule	Name of section	Previous regulation	Relevant section of amended CFI Act
78	Variance audits	1.12	76(4)(c), (ca) and (cb)
79	Qualified or other conclusion audits	1.12	76(4)(c), (ca) and (cb)
80	Conduct of audits	1.12(2)	76(4)(c), (ca) and (cb)
81	Significant reversals relating to natural disturbances	6.10(1)	81(3)
82	Significant reversals relating to conduct	6.10(2)	82(4)
83	Operation of this Subdivision	6.11	85(2)
84	Changes relating to project proponent	6.11(4)	85(2)
85	Errors in offsets reports	6.11(2)	85(2)
86	Acts causing reversal of removal of carbon dioxide	6.11(3)	85(2)
87	Changes relating to operation of project	N/A	85(2)
100	Record keeping requirements—general	17.1	191
101	Record keeping requirements—preparation of offsets report	17.2	191
110	Operation of this Part	26.1	260(1)
111	Procedure at meetings	26.2	260(1)
112	Quorum at meetings	26.3	260(1)
113	Presiding at meetings	26.4	260(1)
114	Manner of deciding questions	26.5	260(1)
Schedule 1	Documents required to establish applicant's identity	Schedule 2 and 3	23(1)(c) and (h)

ATTACHMENT C

Public consultation on Emission Reduction Fund policy framework

In finalising the design of the Emissions Reduction Fund, the Government sought the views of businesses and the community through an extensive consultation process.

Terms of Reference

- Consultation period: 16 October 2013 – 18 November 2013
- Submissions: over 290

Green Paper

- Consultation period: 20 December 2013 – 21 February 2014
- Submissions: over 340
- Information sessions
    - Face to face: Canberra – 3 February 2014 – around 150 RSVPs
    - By phone: 4 public teleconference sessions across 4 and 5 February 2014

White Paper

- Information sessions
    - Face to face:
        - Sydney – 14 May 2014 – 98 RSVPs
        - Canberra – 15 May 2014 – 51 RSVPs
        - Melbourne – 16 May 2014 – 101 RSVPs
    - By phone: 2 sessions – 21 and 22 May 2014 – 28 RSVPs in total

Exposure draft legislation

- Consultation period: 9 May 2014 – 23 May 2014
- Submissions: 49
- Also considered by phone by legal workshop on 20 May 2014

Exposure draft subordinate legislation

- Consultation period: 5 December 2014 - 19 December 2014
- Submissions: 9
- Information sessions by phone: 2

Expert Reference Group

- Has met twice: 12 and 28 February 2014

Technical Working Groups

- Policy development (as of January 2015)

    - Contracts – 1 meeting, consultation on draft contract from 27 June 2014 – 18 July 2014
    - Auctions – 1 meeting
- Industrial sector method development (as of January 2015)
    - Facility method – 8 face-to-face; 5 teleconferences
    - Waste – 4 face-to-face; 1 teleconference
    - Transport – 4 face-to-face; 1 teleconference
    - Energy Efficiency Industrial – 4 face-to-face; 1 teleconference
    - Energy Efficiency Building – 5 face-to-face; 1 teleconference
    - Coal Mine Fugitives – 4 face-to-face; 1 teleconference
- Land sector method development
    - Sequestering Carbon in Soils in Grazing Systems – 8 face-to-face since 2011 (3 in 2014)
    - Livestock – 10 face-to-face; 18 teleconferences
    - Savanna method – 4 face-to-face; 11 teleconferences
    - Reforestation - 2 teleconferences
    - Avoided deforestation – No meetings as yet

Exposure draft methodology consultation

- Alternative waste treatment, coal mining and landfill gas: 3 September – 1 October 2014.
- Commercial building energy efficiency and avoided clearing of native regrowth: 25 September – 23 October 2014.
- Facilities, wastewater treatment and transport: 15 October – 12 November 2014.
- Industrial fuel and energy efficiency, aggregated small energy users, sequestration of carbon in soil using modelled abatement estimates and fertiliser use efficiency in irrigated cotton: 14 November – 12 December 2014.
- Reforestation and avoided land clearing: 8 – 19 December 2014.
- Savannah fire management, Beef cattle herd management, Designated Verified Carbon Standard Projects: 10 December 2014 – 5 January 2015.

Market testing of contract duration

- The Government committed in the Emissions Reduction Fund White Paper to hire a consultant to test the commercial impacts of alternate contract lengths.
    - A market survey was held between 8 and 27 May 2014.
    - 107 organisations were surveyed, with 71 responses in total. The survey respondents' identities are confidential.

Carbon Market Institute information sessions

- Information sessions on the Emissions Reduction Fund were held by the Carbon Market Institute on behalf of the Department on:
    - 21 July 2014 in Melbourne;
    - 22 July 2014 in Sydney;

- 28 July 2014 in Perth;
- 29 July 2014 in Adelaide;
- 1 August 2014 in Brisbane;
- 2 August 2014 in Townsville;
- 11 August 2014 in Geelong;
- 12 August 2014 in Newcastle;
- 26 August 2014 in Dubbo;
- 27 November 2014 in Melbourne;
- 28 November 2014 in Brisbane;
- 1 December 2014 in Sydney; and
- 2 December 2014 in Dubbo.

- Around 500 participants took part overall (including Government representatives).

ATTACHMENT D

Statement of Compatibility with Human Rights

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

Carbon Credits (Carbon Farming Initiative) Rule 2015

The *Carbon Credits (Carbon Farming Initiative) Rule 2015* (the Rule) is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Legislative Instrument

The *Carbon Credits (Carbon Farming Initiative) Act 2011* (CFI Act) enables the crediting of greenhouse gas abatement from emissions reduction activities across Australia. Greenhouse gas abatement is achieved either by reducing or avoiding emissions, or by removing carbon from the atmosphere and storing it.

The Rule details additional administrative procedures under the CFI Act, including information and audit requirements for project applications and reports, the fit and proper person test for participants, procedures for parts of the carbon abatement purchasing process, the length of reporting periods, and notification and record-keeping requirements.

The content of the Rule is largely based on regulations under the CFI Act. Those relevant regulations are repealed upon commencement of the Rule.

Human rights implications

The Rule engages Article 17(1) of the International Covenant on Civil and Political Rights (ICCPR).

Article 17(1) of the ICCPR provides for the right of every individual to be protected against arbitrary or unlawful interference with the individual's privacy. The term 'privacy' has not been defined by international human rights law but it is generally accepted that it encompasses 'information privacy'— the right to privacy of information about a particular individual. An interference with an individual's privacy will not be considered 'unlawful' if it is authorised by a law that complies with the provisions, aims and objective of the ICCPR and specifies in detail the precise circumstances in which such interferences may be permitted. An interference with an individual's privacy will not be considered 'arbitrary' if it is reasonable in the particular circumstances and the law is in accordance with the provisions, aims and objectives of the ICCPR.

The Rule engages the right to privacy because:

- Part 3 of the Rule requires a person to provide a range of specified information when applying for a certificate of entitlement. This is primarily to establish the identity of each project proponent and allow the Regulator to determine whether or not that person is a fit and proper person in accordance with section 60 of the CFI Act.

- Part 6 of the Rule includes a number of reporting and notification requirements necessary for the Regulator to determine whether to undertake compliance action under the CFI Act. They are largely based on the regulations under the CFI Act.

- Part 17 of the Rule includes a number of record keeping requirements which have been simplified from those in the regulations under the CFI Act. These focus on business rather than personal information.

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

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

Further, the Rule does not authorise an unlawful interference with an individual's privacy because the Rule adequately specifies the circumstances in which information may be collected.

Moreover, the Clean Energy Regulator is required to handle all personal information in accordance with the *Privacy Act 1988* and is bound by the secrecy provisions in the *Clean Energy Regulator Act 2011*. In particular, Part 3 of the *Clean Energy Regulator Act 2011* includes a number of significant restrictions on the use or disclosure of information collected by the Clean Energy Regulator.

The Rule is therefore compatible with Article 17(1) of the ICCPR because it does not unlawfully or arbitrarily interfere with an individual's privacy.

A detailed statement of compatibility of the provisions of the Emissions Reduction Fund is provided in the Explanatory Memorandum for the *Carbon Farming Initiative Amendment Bill 2014*: http://www.environment.gov.au/system/files/pages/7aef9f12-8ba1-4d9a-bf6a-1bc89a0bd6f5/files/cfi-amendment-bill-explanatory-memorandum.pdf.

Conclusion

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