

## **EXPLANATORY STATEMENT**

Issued by authority of the Minister for Climate Change and Energy

### *Carbon Credits (Carbon Farming Initiative) Amendment (Information Requirements) Rules 2023*

#### **Legislative authority**

The *Carbon Credits (Carbon Farming Initiative) Act 2011* (CFI Act) establishes a scheme (the ACCU scheme) for the registration of projects that remove carbon dioxide from the atmosphere and projects to avoid emissions of greenhouse gases. Paragraph 23(1)(c) of the CFI Act provides that an application to the Clean Energy Regulator (Regulator) for the declaration of an eligible offsets project must include such information as specified in the legislative rules.

Section 308 of the CFI Act provides that the Minister may make rules prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

#### **Purpose**

The *Carbon Credits (Carbon Farming Initiative) Amendment (Information Requirements) Rules 2023* (the Amendment Rules) amends the *Carbon Credits (Carbon Farming Initiative) Rule 2015* (the Rules) made under the CFI Act.

#### **Impact and Effect**

The Amendment Rules amend the Rules to modernise and streamline proof of identity requirements for participation in the ACCU scheme regulated by the Regulator, and to simplify the requirements around the types of information that must be provided for entry into the scheme. The amendments include:

- giving individuals whose identity must be verified by the Regulator the option to elect to have their digital identity verified through the Australian Government Digital Identity System;
- allowing an individual who elects not to use the Australian Government Digital Identity System, the option of providing a document identifier instead of a certified copy of the full document (for example, a driver's licence number rather than a copy of the entire licence);
- expanding the list of persons authorised to certify copies of documents to be consistent with Statutory Declarations legislation (improving access to Australians with limited access to specialised services in remote and regional Australia); and
- remove the requirement for applicants to provide their gender to the Regulator.

The CFI Act set out the requirements by which applicants must verify their identity to the Regulator, and currently requires the provision of hard copy certified documents. The Rules

also set out the information that must be provided by applicants, some of which is not required by the Regulator to regulate the schemes.

These amendments reduce regulatory burden on regulated entities by allowing individuals to elect to use digital identity verification through the Australian Government Digital Identity System, and by bringing document certification and verification requirements in line with other Commonwealth agencies.

## **Consultation**

Public consultation was undertaken by the Regulator in September 2022, with 20 submissions received from the public. The responses were broadly positive, with several comments that changes to streamline and improve efficiency of application processes would be beneficial to applicants. No changes were made to the proposed approach following the consultation as respondents were generally supportive.

In providing a forum for public responses, the Regulator highlighted, in relation to the digital pathway for identity verification being proposed, that this would be addition to the existing entry pathway for new scheme participants providing certified copies of identification documents, should they wish to do so.

## **Regulatory Impact**

The Office of Impact Analysis has advised that a Regulation Impact Statement is not required (Reference OBPR22-03876) as the amendments are unlikely to have more than a minor regulatory impact.

The Regulator has undertaken a Privacy Impact Threshold assessment and determined that a further privacy impact assessment is not required as the amendments allow for online submission of information elements, but do not change the nature of the information collected.

## **Details and Operation**

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

The Amendment Rules commence on the day after they are registered on the Federal Register of Legislation.

Details of the Amendment Rules are set out in **Attachment A**.

The Amendment Rules are 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*. A Statement of Compatibility with Human Rights is set out in **Attachment B**.

**ATTACHMENT A****Details of the Carbon Credits (Carbon Farming Initiative) Amendment (Information Requirements) Rules 2023****Section 1 – Name of Rules**

This section provides that the name of the Amendment Rules is the *Carbon Credits (Carbon Farming Initiative) Amendment (Information Requirements) Rules 2023*.

**Section 2 – Commencement**

This section provides that the Amendment Rules will commence the day after the instrument is registered.

**Section 3 – Authority**

This section states that the Amendment Rules are made under the *Carbon Credits (Carbon Farming Initiative) Act 2011*.

**Section 4 – Schedule(s)**

This section provides that the Amendment Rules will, when made, amend the Rules in the manner set out in the Schedule.

**Schedule 1 – Amendments*****Carbon Credits (Carbon Farming Initiative) Rule 2015*****Item [1] – Subsection 4(1) (paragraphs (a) and (b) of the definition of *certified copy*)**

This item repeals and substitutes paragraphs (a) and (b) of the definition of '*certified copy*' in subsection 4(1) to specify that persons prescribed for the purposes of paragraph 8(b) of the *Statutory Declarations Act 1959* can certify that a copy of a document is a true copy

**Item [2] – Subsection 4(1)**

This item inserts the definitions of '*digital identity*', '*document verification service*', '*identity evidence*' and '*identity service provider*' in subsection 4(1).

The definition of '*digital identity*' of an individual means a distinct electronic representation of the individual that enables the individual to be sufficiently distinguished when interacting online with services.

The definition of '*document verification service*' means the services provided by the Australian Government Document Verification System, or that service continuing in existence with a different name.

The definition of '*identity evidence*' ensures a person's identity via digital proof or documentary proof.

The definition of ‘*identity service provider*’ means an accredited participant in the Australian Government Digital Identity System that provide a service that generates, manages, maintains, or verifies information relating to the identity of an individual.

### **Item [3] – Section 15**

This item repeals and substitutes section 15 which concerns the information required to accompany an application for the declaration of an eligible offsets project.

The amendment sets out the information that must be provided with an application to register an offsets project. The amendments streamline the section, and remove the requirement to provide information about the applicant’s gender as this information is unnecessary for the Regulator’s assessment of the application or administration of the scheme.

### **Item [4] – Section 16 (heading)**

This item amends the heading of Section 16 to clarify that its provisions apply to ‘identity evidence’. This amendment reflects other amendments in this Schedule.

### **Item [5] – Subsection 16(1)**

This item repeals and substitutes subsection 16(1) which concerns the information required for identity verification of an applicant applying to register an offsets project. New subsection 16(1) provides that an application to register an offsets project must be accompanied by identity evidence for the applicant and certain other specified persons. Where the applicant is of a kind mentioned in subsection (1A), the application must include the documents set out in the table in that subsection.

New subsection (1A) sets out the information that must accompany applications from applicants of the kind mentioned in each item of the table in that subsection. Subsection (1A) also provides that where identification information is required for an individual, that person’s digital identity may be used by the Regulator, with that person’s consent. Individuals continue to be able to verify their identity by providing certified copies of identification documents set out in subsection (1B), and under subsection (1C) may now also provide document identifiers in place of the document, where the Regulator is able to verify the document by providing the document identifier to the document verification service.

### **Item [6] – Subsection 16(2)**

This item omits and substitutes references to ‘a certified copy of a document’ in subsection 16(2) with ‘identity evidence for a person’, for consistency with other amendments in this Schedule.

### **Item [7] – Paragraph 16(2)(b)**

This item repeals and omits and substitutes references to ‘a document (or a certified copy of a document)’ in paragraph 16(2)(b) with ‘identity evidence, for consistency with other amendments in this Schedule.

**Item [8] – Paragraph 16(2)(c)**

This item omits and substitutes references to a ‘document’ in paragraph 16(2)(c) with ‘identity evidence’ for consistency with other amendments in this Schedule.

**Item [9] – Subsection 16(3)**

This item omits and substitutes references to ‘a certified copy of a document under subsection (1)’ in subsection 16(3) with ‘identity evidence’ for consistency with other amendments in this Schedule.

**Item [10] – Paragraph 16(3)(b)**

This item omits and substitutes references to ‘document (or a certified copy of the document)’ in paragraph 16(3)(b) with ‘identity evidence’ for consistency with other amendments in this Schedule.

**Item [11] – Paragraph 16(3)(c)**

This item omits and substitutes references to a ‘document’ in paragraph 16(3)(c) with ‘identity evidence’ for consistency with other amendments in this Schedule.

**Item [12] – Subsection 16(4)**

This item omits and substitutes references to ‘a certified copy of a document under subsection (1)’ in subsection 16(4) with ‘identity evidence for a person’ for consistency with other amendments in this Schedule.

**Item [13] – Paragraph 16(4)(b)**

This item omits and substitutes references to ‘document (or a certified copy of the document)’ in paragraph 16(4)(b) with ‘identity evidence’ for consistency with other amendments in this Schedule.

**Item [14] – Subsection 17(1)**

This item repeals and substitutes subsection 17(1) to simplify the wording.

**Item [15] – Paragraphs 18(1)(a) and (b)**

This item repeals and substitutes paragraphs 18(1)(a) and (b) to refer to identity evidence rather than documents for consistency with other amendments in this Schedule.

**Item [16] – in the appropriate position in Part 29**

The item inserts a new section 127 into Division 3 of Part 29 that specifies that the above amendments only apply to applications to register offset projects made after the commencement of the Amendment Rule.

The amendments also provide that a reference to ‘identity evidence’ in paragraphs 16(2)(b) and (c), 16(3)(b) and (c) and 16(4)(b) of the *Carbon Credits (Carbon Farming Initiative) Rule 2015* refers to documents required to be provided to the Regulator before the commencement of the Amendment Rule.

**Item [17] – Schedule 1 (heading)**

This item repeals and substitutes the heading of Schedule 1 to clarify how that Schedule relates to section 16 and the table outlining the documents to be used for establishing identity, as an alternative to sharing digital identity.

**Item [18] – Schedule 1 (note to Schedule heading)**

This item repeals and substitutes the note to the Schedule 1 heading to clarify how that Schedule relates to paragraphs 16(1B)(a) and (b) of the Rules.

**ATTACHMENT B****Statement of Compatibility with Human Rights**

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

***Carbon Credits (Carbon Farming Initiative) Amendment (Information Requirements) Rules 2023***

The Amendment 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 purpose of the *Carbon Credits (Carbon Farming Initiative) Amendments (Information Requirements) Rule 2023* (the Amendment Rule) is to modernise and streamline proof of identity requirements for participation in the ACCU scheme regulated by the Clean Energy Regulator (Regulator), and simplify the requirements around the types of information that must be provided for entry into these schemes.

The Amendment Rule gives effect to these objectives by amending the *Carbon Credits (Carbon Farming Initiative) Rule 2015* (CFI Rule).

The changes to the CFI Rule are considered minor and machinery as they support the objectives of the CFI Act and increase options for Australians to interact with the Regulator. These changes allow an individual whose identity must be verified by the Regulator to voluntarily elect to have the Regulator access their digital identity through the Australian Government Digital Identity System.

The amendments do not remove existing pathways for interacting with the Regulator, they add ways to do so. Applicants seeking to interact with the Regulator will have more choices in the way in which they can verify their identity and begin the process of being a regulated entity under the CFI Rule.

**Human rights implications**

The Rules may engage the right to privacy under Article 17 of the International Covenant on Civil and Political Rights (ICCPR). No other applicable rights or freedoms are engaged.

**The right to privacy – Article 17 of the ICCPR**

Article 17 of the ICCPR prohibits unlawful or arbitrary interferences with a person's privacy, family, home and correspondence. The right to privacy includes respect for informational privacy, including the storing, using, and sharing personal information, and the right to control the dissemination of this information.

The rights contained in Article 17 of the ICCPR may be limited in specified circumstances when the limitation is established in a non-arbitrary manner and when authorised by law. For a limitation on a right to be considered non-arbitrary, the interference must be for a reason

consistent with the relevant Convention and reasonable, necessary and proportionate in the context of a legitimate objective.

The CFI Rules require the collection and use of information and documents, which may include personal information, by the Regulator in order to verify the identity of applicant's seeking registration of an offsets project. The amendments allow for an individual whose identity must be verified by the Regulator to voluntarily elect to have the Regulator access their digital identity through the Australian Government Digital Identity System. This allows a person to only provide identification documents once through the Australian Government Digital Identity System.

If the individual elects for the Regulator to access their digital identity, the Regulator will be able to receive digital attributes for the person from identity service provider's accredited under the Australian Government's Trusted Digital Identity Framework. The Australian Government Digital Identity System has been designed to protect user's privacy and security, and is managed by the Digital Transformation Agency.

The Regulator's use of digital attributes is subject to strict secrecy provisions. Part 3 of the *Clean Energy Regulator Act 2011* (CER Act) provides a range of protections for information relating to the affairs of a person or corporation that is obtained by officials of the Regulator ('protected information'). This includes digital attributes obtained by the Regulator with the consent of the relevant individual. Protected information may not be disclosed by officials of the Regulator unless an exemption in Part 3 of the CER Act applies, which generally relate only to sharing within government for the purpose of climate change laws, law enforcement or safety. Existing secrecy provisions do not authorise the release of personal information that may be contained within protected information, and this restriction is not modified by the Regulations to ensure privacy of personal information is adequately protected.

The collection, storage and use of personal information collected by the Regulator through digital attributes is also subject to the *Privacy Act 1988* and information about the Regulator's privacy policies is available on its website.

The Amendment Rules build upon existing provisions in the CFI Rule and provide a lawful basis for obtaining, storing and sharing personal information appropriately. The provision and use of personal information occurs to the extent that it is necessary and reasonable for the identification of applicants and project proponents, and therefore the administration of the eligible offsets project scheme.

The Amendment Rules do not infringe the prohibition on unlawful or arbitrary interferences with a person's privacy, family, home and correspondence. The Amendment Rules establish a voluntary avenue in which someone engaging with the Regulator can elect to have their existing verified digital identity accessed by the Regulator. Individuals and corporations can continue to provide documentary identification evidence to the Regulator, if preferred. The Amendment Rules provide the option for a streamlined approach to the collection of information that is reasonable and necessary for the administration and integrity of the eligible offsets project scheme.



**Conclusion**

This Legislative Instrument is compatible with human rights because, to the extent that it may limit those rights, that limitation is reasonable, necessary and proportionate.

**Chris Bowen**  
**Minister for Climate Change and Energy**