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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

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CARBON CREDITS  
(CONSEQUENTIAL AMENDMENTS) BILL 2011

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EXPLANATORY MEMORANDUM

(Circulated by authority of the  
Minister for Climate Change and Energy Efficiency, the Hon Greg Combet AM MP)



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# Glossary

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The following abbreviations and acronyms are used throughout this explanatory memorandum.

<i>Abbreviation</i>	<i>Definition</i>
ACCU	Australian carbon credit unit
Administrator	Carbon Credits Administrator
The main bill	The Carbon Credits (Carbon Farming Initiative) Bill 2011
The Registry bill	The Australian National Registry of Emissions Units Bill 2011
CFI	The Carbon Farming Initiative
Consequential amendments bill	The Carbon Credits (Consequential Amendments) Bill 2011
GEDO	Greenhouse and Energy Data Officer
Kyoto protocol	The Kyoto Protocol to the United Nations Convention on Climate Change done at Kyoto on 11 December 1997, as amended and in force for Australia from time to time.
NGER Act	<i>National Greenhouse and Energy Reporting Act 2007</i>
Registry	Australian National Registry of Emissions Units
RTC	Reporting Transfer Certificate



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# ***General outline and financial impact***

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## **Rationale for the Carbon Farming Initiative**

### **The Carbon Farming Initiative**

The rationale for the Carbon Farming Initiative is included in the explanatory memorandum for the Carbon Credits (Carbon Farming Initiative) Bill 2011 (the main bill).

On 14 August 2010, the Prime Minister announced an election commitment to establish the Carbon Farming Initiative (CFI) to give farmers, forest growers and landholders access to domestic voluntary and international carbon markets. This will begin to unlock the abatement opportunities in the land sector which currently make up 23 percent of Australia's emissions.

The Carbon Farming Initiative will include:

- A carbon crediting mechanism ('the scheme');
- Funding to fast track the development of methodologies for offset projects, including on-farm demonstration of biochar; and
- Information and tools to help farmers and landholders benefit from carbon markets.

The Carbon Credits (Carbon Farming Initiative) Bill 2011 fulfils the Australian Government's commitment to develop legislation for the scheme to provide long-term certainty to participants. It is described in a separate explanatory memorandum.

### **The Australian National Registry of Emissions Units**

The background to the Registry is included in the explanatory memorandum for the Australian National Registry of Emissions Units Bill 2011 (the Registry bill).

The Registry serves two primary purposes:

- To be Australia's national registry for Kyoto units, which is required under the Kyoto Protocol; and
- To act as a registry for Australian carbon credit units (ACCUs) under the Carbon Farming Initiative.

The Registry will be maintained by electronic means by the Carbon Credits Administrator and will facilitate and track the issuance, holding, transfer, cancellation and retirement of units under the Carbon Farming Initiative. It will also act as Australia's national registry for Kyoto units.

## **The Carbon Credits (Consequential Amendments) Bill 2011**

### **Introduction**

The Carbon Credits (Consequential Amendments) Bill 2011 includes amendments which are consequential upon the passage of the Carbon Credits (Carbon Farming Initiative) Bill 2011 and the Australian National Registry of Emissions Units Bill 2011. It also contains transitional provisions and makes various amendments to the *National Greenhouse and Energy Reporting Act 2007*.

The consequential amendments include amendments to the following Acts:

- *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*;
- *Australian Securities and Investments Commission Act 2001*;
- *Competition and Consumer Act 2010*; and
- *Corporations Act 2001*.

The consequential amendments bill also includes amendments to the *National Greenhouse and Energy Reporting Act 2007*, including extending reporting transfer certificate arrangements.

***Date of effect:*** Schedule 1 will come into effect at the same time as section 3 of the proposed Carbon Credits (Carbon Farming Initiative) Bill 2011. Schedule 2 will come into effect the day after the Bill receives the Royal Assent. Sections 1 to 3 and other parts of the Bill will commence on the day the Bill receives the Royal Assent.

***Proposal announced:*** The Department of Climate Change and Energy Efficiency (DCCEE) consulted with stakeholders on options for scheme design from October 2010 to early February 2011.

The consultation process involved individual meetings and workshops in Canberra, Sydney, Adelaide, Melbourne, Perth, Brisbane, Darwin and some regional centres, as well as a period for formal submissions. Over 350 individuals attended meetings with DCCEE, representing almost 250 organisations.

A consultation paper on the proposed design of the scheme was released for public comment on 22 November 2010.

Approximately 280 submissions were received from a diverse range of stakeholders, including farmers, regional bodies and scientific organisations.

Stakeholder feedback was broadly positive though several stakeholders noted that scheme incentives would depend on linking to a carbon price mechanism.

Stakeholder concerns were addressed through a variety of approaches taken under the main bill. These include providing for regulations to reduce audit requirements for small projects. Administrative and compliance costs have been further reduced through streamlining audit provisions with audit requirements under the *National Greenhouse and Energy Reporting Act 2007* under the Consequential Amendments bill.

***Financial impact:*** The financial impact of the Carbon Farming Initiative and the Australian National Registry of Emissions Units is addressed in the explanatory memorandum for the main bill.



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# **Chapter 1**

## **General Amendments**

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### **Outline of chapter**

1.1 This chapter provides explanatory material on those amendments to other legislation including in the Carbon Credits (Consequential Amendments) Bill 2011.

### **Context of amendments**

1.2 The amendments described in this Chapter are consequential in nature and are needed to ensure the Carbon Farming Initiative is a comprehensive, workable scheme.

1.3 Most of the proposed amendments will apply existing legislation relating to financial services, anti-money laundering and counter-terrorism financing to units held in the Registry. The amendments are intended to provide additional safeguards to protect purchasers of ACCUs and international units, and to provide deterrence against criminal activities involving the CFI.

### **Summary of new law**

1.4 This chapter addresses amendments to be made to the following Acts consequential on the Carbon Credits (Carbon Farming Initiative) Bill 2011:

- *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*;
- *Australian Securities and Investments Commission Act 2001*;
- *Competition and Consumer Act 2010*;
- *Corporations Act 2001*; and
- *National Greenhouse and Energy Reporting Act 2007*.

### **Detailed explanation of new law**

#### ***Anti-Money Laundering and Counter-Terrorism Financing Act 2006***

1.5 Amendments to this Act will address the potential risk of money-laundering through the trade in ACCUs and other types of

emissions units, by regulating the buying and selling of these units on behalf of another person as a 'designated service' under the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*.

1.6 A financial institution or person who provides a designated service is subject to reporting and other obligations under that Act and must, for example, report any suspicious matters or transactions above specified thresholds. Except in special cases, they will also be required to verify their customer's identity prior to trading in ACCUs or international emissions units.

1.7 Amendments to Item 33 of Table 1 (Provision of a designated service) in subsection 6(2) of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* will make the acquisition and disposal of ACCUs and eligible international emissions units by an agent on behalf of another person a 'designated service'. It will apply where the person does so in the course of carrying on a business of acquiring or disposing of those units as an agent for someone else, and where the service is not specified in the Anti-Money Laundering and Counter-Terrorism Financing Rules. [*Schedule 1, Part 1, items 3 and 4*].

1.8 The effect of these amendments is that a person such as a broker who buys ACCUs on behalf of a client will be subject to reporting and other obligations under the designated service provisions of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*.

1.9 Designated services are generally limited to services provided to a designated customer in the course of carrying on the core activity of a business and do not capture activities which are peripheral to the core activity of the business.

1.10 The term 'Australian carbon credit unit' is defined by reference to its meaning in the main bill [*Schedule 1, Part 1, item 1*].

1.11 The term 'eligible international emissions unit' is likewise defined by reference to its meaning in the main bill and includes units issued outside Australia [*Schedule 1, Part 1, item 2*].

***Financial products: Australian Securities and Investments Commission Act 2001 and Corporations Act 2001***

1.12 Amendments to the *Corporations Act 2001* and the *Australian Securities and Investments Commission Act 2001* are needed to regulate financial services relating to ACCUs and eligible international emissions units, similar to other financial products.

1.13 These amendments will provide a strong regulatory regime to protect purchasers of ACCUs in a new area where there will not be familiarity with offsets credits issued by government. It will also reduce the risk of misconduct in the market. Appropriate adjustments to the

regime to fit the characteristics of units and avoid unnecessary compliance costs will be made.

1.14 Defining ACCUs and eligible international emissions units as financial products will trigger the application of provisions relating to financial services and markets, and product disclosure, under Chapter 7 of the *Corporations Act 2001* [Schedule 1, Part 1, items 9-11]. It will also trigger the general consumer protection provisions in Part 2 of Division 2 of the *Australian Securities and Investments Commission Act 2001* (the ASIC Act) [Schedule 1, Part 1, item 5].

1.15 ACCUs and eligible international units will not, however, be financial products for the purpose of paragraph 12BAB(1)(g) of the ASIC Act [Schedule 1, Part 1, item 6]. Section 12BAB of the ASIC Act defines a ‘financial service’. The amendment will restrict the application of the ASIC Act to the following financial services relating to ACCUs and eligible international emissions units:

- providing financial product advice;
- dealing in a financial product;
- making a market for a financial product;
- operating a registered scheme;
- providing a custodial or depository service;
- operating a financial market or clearing and settlement facility;  
or
- engaging in conduct of a kind prescribed in regulations.

***Disclosure of information: Competition and Consumer Act 2010, Australian Securities and Investments Commission Act 2001 and National Greenhouse and Energy Reporting Act 2007***

1.16 Amendments to the *Competition and Consumer Act 2010* and the *Australian Securities and Investments Commission Act 2001* are needed to ensure appropriate exchange of information between administrators.

1.17 The *Trade Practices Act 1947* was renamed as the *Competition and Consumer Act 2010* on 1 January 2011.

1.18 The Australian Competition and Consumer Commission may disclose certain information to the Administrator if the Chair is satisfied that it would enable or assist the Administrator to perform his or her functions [Schedule 1, Part 1, item 8].

1.19 The Administrator will also be added to the list of agencies to which the Australian Securities and Investments Commission (ASIC) may disclose information [Schedule 1, Part 1, item 7].

1.20 This means that ASIC will, for example, be able to disclose information that it possesses about wrongdoing in connection with trading of ACCUs which is also of significance to the Administrator as the operator of the Registry.

1.21 Similarly, the Greenhouse and Energy Data Officer (GEDO), or a person authorised by the GEDO, will be able to disclose relevant greenhouse and energy information to the Administrator [*Schedule 1, Part 1, item 14*]. For example, the Administrator could provide GEDO with information about the performance of an audit under the CFI which may assist the GEDO to make decisions regarding registered greenhouse and energy auditors.

### ***Audit***

1.22 The audit framework for the CFI will utilise the existing audit framework under the NGER Act as:

- it promotes administrative efficiency and reduces duplication; for example, there will be a single register for qualified assurance auditors.
- it reduces complexity for auditors (many of whom will operate under both Acts) as they are already familiar with audit requirements set out in the NGER regulations and NGER Audit Determination and can apply the same legislative requirements in areas of overlap between NGER and CFI legislation.

1.23 In addition, use of the same audit framework will assist CFI proponents as they will need to report project emissions from electricity and other energy generation, transport, and waste, using methods set out in the NGER (Measurement) Determination. Many landfill operators participating in CFI projects will also be NGER registered corporations and will be submitting both NGER and CFI project reports.

1.24 CFI audits must be undertaken by a greenhouse and energy auditor registered under the NGER Act. This link is recognised through the definition of ‘registered greenhouse and energy auditor’ in clause 5 of the main bill, which has the same meaning as in the NGER Act.

1.25 The defined terms “CFI audit” [*Schedule 1, Part 1, item 12*] and “CFI audit report” [*Schedule 1, Part 1, item 13*], which are to be inserted into section 7 of the NGER Act, refer to all the types of audits carried out in relation to the main bill, namely:

- Compliance audits under clause 214;
- Other audits under clause 215;
- Where the regulations prescribe that an audit report must accompany:

- an application for a certificate of entitlement under clause 13(1)(e);
- an application for a declaration of an eligible offsets project under clause 23(1)(d); or
- an offsets report under clause 76(4)(c).

1.26 The register of greenhouse and energy auditors kept under section 75A of the NGER Act will list auditors for the purpose of both the NGER Act and the main bill [*Schedule 1, Part 1, item 16*].

1.27 The Minister may set out mandatory requirements for registered greenhouse and energy auditors relating to greenhouse and energy audits and CFI audits [*Schedule 1, Part 1, item 15*].



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## **Chapter 2**

### ***Transitional provisions***

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#### **Outline of chapter**

2.1 This chapter describes the transitional provisions included in Part 2 of Schedule 1 of the Carbon Credits (Consequential Amendments) Bill 2011. These transitional provisions address the arrangements for accounts established in the Australian National Registry of Emissions Units (the Registry) prior to commencement of the legislation. They also address the arrangements for audit determinations made under section 75 of the *National Greenhouse and Energy Reporting Act 2007* prior to commencement.

#### **Context of amendments**

##### ***Australian National Registry of Emissions Units***

2.2 The Registry is an electronic system which is used to ensure accurate accounting of the issuance, holding, transfer, acquisition, cancellation, retirement and carry-over of emissions units under the Kyoto Protocol.

2.3 The Registry was established under the Commonwealth's executive power to meet one of Australia's commitments under the Kyoto Protocol and does not currently have a legislative basis.

2.4 The Government intends to modify the Registry so that it can be used to track the location and ownership of units issued under the CFI, as well as meet ongoing obligations under the Kyoto Protocol. The Registry would be maintained by the Administrator of the CFI.

2.5 Since the Registry was opened in September 2009, organisations and individuals have been able to apply to open accounts and participate in the domestic and international trade of Kyoto units.

2.6 The amendments contained in Part 2 of Schedule 1 to the consequential amendments bill allow for accounts established under the administrative Registry to continue in existence with minimal disruption or additional approvals required for account holders.

##### ***Audit Determinations***

2.7 Under section 75 of the *National Greenhouse and Energy Reporting Act 2007* (NGER Act), the Minister may determine

requirements to be met by audit team leaders in preparing for and carrying out greenhouse and energy audits and in preparing audit reports.

## **Summary of new law**

2.8 Accounts held in the non-statutory Registry prior to commencement will continue in existence under the legislated Registry.

2.9 Pre-existing audit determinations will continue in existence despite the amendments to section 75 of the NGER Act.

## **Detailed explanation of new law**

### *Australian National Registry of Emissions Units*

2.10 The Registry will be established under Part 2 of the Registry bill. Part 2 of Schedule 1 of the consequential amendments bill provides transitional arrangements for accounts in the Registry which was established administratively prior to the commencement of the legislation.

2.11 Accounts held by either the Commonwealth or another person will continue in existence as Registry accounts [*Schedule 1, Part 2, item 17*].

2.12 The designation of the various Commonwealth accounts will be unchanged [*Schedule 1, Part 2, item 18*].

### *Audit Determinations*

2.13 Audit determinations made under section 75 of the NGER Act that are in force immediate before commencement of the item will be treated as if they had been made under the amended section 75. This means that registered greenhouse and energy auditors undertaking CFI audits will be required to comply with them [*Schedule 1, Part 2, item 19*].

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## **Chapter 3**

# ***Amendments relating to reporting transfer certificates***

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### **Outline of chapter**

3.1 Schedule 2 to the consequential amendments bill incorporates amendments to the *National Greenhouse and Energy Reporting Act 2007* (NGER Act) to allow reporting transfer certificates (RTCs) to be created after 30 June 2011 and to ensure existing RTCs continue to have effect beyond 30 June 2011.

### **Context of amendments**

3.2 The NGER Act provides a national framework for the reporting and dissemination of information related to greenhouse gas emissions, energy consumption and energy production.

3.3 RTCs allow the voluntary transfer of reporting obligations relating to a facility from a registered controlling corporation to another corporation where the other corporation has financial control of the facility and formally applies for the transfer of responsibilities.

3.4 The RTC provisions of the NGER Act are voluntary and impose no additional burden on industry stakeholders beyond those originally intended by the NGER Act. They are intended to reduce administration and economic costs for industry and increase flexibility in establishing reporting arrangements under the NGER system.

3.5 RTCs were introduced in 2009 as a temporary measure ahead of the then scheduled introduction of the Carbon Pollution Reduction Scheme (CPRS). RTC provisions were closely aligned with the liability transfer certificate (Category B) provisions of the draft CPRS legislation.

3.6 At the time the RTC provisions were included in the NGER Act, it was intended that corporations with operational or financial control of a facility would have to arrange and apply for a new liability transfer certificate from the proposed Australian Climate Change Regulatory Authority following commencement of the CPRS. As it was anticipated that the CPRS would commence on 1 July 2011, provisions in the NGER Act relating to the establishment and duration of RTCs provided that they could not be created after 30 June 2011 and were restricted to the 2008-09, 2009-10 and 2010-11 financial years.

3.7 Schedule 2 of the consequential amendments bill makes amendments to the NGER Act so that RTCs can continue to be created by the Greenhouse and Energy Data Officer beyond 30 June 2011.

3.8 The consequential amendments bill also ensures that any RTCs which have already been created will continue to have effect beyond 30 June 2011.

3.9 Extension of these provisions will continue flexibility to accommodate contractual arrangements, such as those around mining operations.

3.10 Continuation of the RTC provisions in the NGER Act through the consequential amendments bill is not intended to presuppose the introduction of a particular type of carbon price mechanism in the future. The amendments are intended to maintain the current flexible reporting arrangements until there is clear direction on carbon pricing.

## **Summary of new law**

3.11 This chapter addresses amendments to the NGER Act to allow RTCs to be created, and for existing RTCs to continue, after 30 June 2011. These amendments are needed as a consequence of the failure of the Carbon Pollution Reduction Scheme legislation to achieve passage through Parliament.

## **Comparison of key features of new law and current law**

<i>New law</i>	<i>Current law</i>
The voluntary transfer of reporting obligations relating to a facility from a registered controlling corporation to another corporation where the other corporation has financial control of the facility and formally applies for the transfer of responsibilities will continue indefinitely.	There is no capacity for the voluntary transfer of reporting obligations after 30 June 2011.

## **Detailed explanation of new law**

### *Definitions*

3.12 The definition of ‘interim financial year’ in section 7 of the NGER Act, which restricts the operation RTCs to the 2008-09, 2009-10 and 2010-11 financial years, is no longer required and so is repealed [*Schedule 2, Item 1*].

### **Registration**

3.13 Under section 13(3) of the NGER Act, a facility which has an RTC in place will be disregarded for the purpose of determining whether the group thresholds in section 13 of the NGER Act have been met.

3.14 The amendment to remove the reference in this section to ‘interim financial year’ will ensure that RTCs will continue to have effect beyond 30 June 2011 [*Schedule 2, Item 2*].

### **Obligations of registered corporations etc**

3.15 The NGER Act takes a similar approach for reporting purposes. Under subsection 19(5A) of the NGER Act, a member of a corporation’s group does not have operational control of a facility for a given day during an interim financial year if another person holds an RTC for that facility on that day. The amendment to remove the reference in this section to ‘interim financial year’ will ensure that RTCs will continue to have effect beyond 30 June 2011 [*Schedule 2, Item 3*].

### **Reporting obligations of holders of reporting transfer certificates**

3.16 RTC holders are also ‘registered corporations’, but they are not necessarily a controlling corporation and are provided with an RTC on the basis that they have financial control. A corporation holding an RTC for all or part of a financial year must report to the GEDO the greenhouse gas emissions, energy production and energy consumption from the operation of that facility during that time in accordance with 22G. Failure to do so may be an offence under Division 137 of the Criminal Code and a non-compliant corporation may be liable for a civil penalty of 2000 penalty units.

3.17 Amendments which, in essence, substitute references to ‘financial year’ for ‘interim financial year’, will ensure that RTCs will continue to have effect beyond 30 June 2011 [*Schedule 2, Items 4 to 9*].

3.18 Currently under section 22M of the NGER Act, a RTC comes into force on the day specified in the certificate as the start day, and remains in force until the end of 30 June 2011.

3.19 Amendments to subsection 22M(3) of the NGER Act provide that instead of ceasing on 30 June 2011, a certificate will remain in force until it is surrendered under section 22N or is cancelled under section 22P [*Schedule 2, Item 10*].

### **Publishing information**

3.20 Subsections 24(1AD) and 24(1AE) of the NGER Act address the matters which the Regulator is required to or may publish in relation to reports by holders of RTCs. Amendments to subsection 24(1AD) ensure that these requirements continue to apply in relation to information about the holders of RTCs after 30 June 2011 [*Schedule 2, Items 11 and 12*].



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## **Schedule 1: General amendments**

<i>Bill reference</i>	<i>Paragraph number</i>
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## **Schedule 2: Amendments relating to reporting transfer certificates**

<i>Bill reference</i>	<i>Paragraph number</i>
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