Carbon Credits (Consequential Amendments) Bill 2011

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Carbon Credits (Consequential Amendments) Bill 2011

**Date introduced:** 24 March 2011  
**House:** House of Representatives  
**Portfolio:** Climate Change and Energy Efficiency  
**Commencement:** Schedule 1 commences at the same time as section 3 of the *Carbon Credits (Carbon Farming Initiative) Act 2011*. Schedule 2 commences the day after Royal Assent and all other sections commence the day of Royal Assent.

**Links:** The links to the Bill, its Explanatory Memorandum and second reading speech can be found on the Bill’s home page, or through [http://www.aph.gov.au/bills/](http://www.aph.gov.au/bills/). When Bills have been passed and have received Royal Assent, they become Acts, which can be found at the ComLaw website at [http://www.comlaw.gov.au/](http://www.comlaw.gov.au/).

**Purpose**

The Carbon Credits (Consequential Amendments) Bill 2011 (the Bill) amends five Acts to support and streamline the establishment of the proposed Carbon Farming Initiative (CFI) provided by the Carbon Credits (Carbon Farming Initiative) Bill 2011 (CFI Bill) and the Australian National Registry of Emissions Units Bill 2011 (Registry Bill). The five Acts amended are:

- *The Australian Securities and Investments Commission Act 2001* (ASIC Act)  
- *The Competition and Consumer Act 2010* (CCA Act)  
- *The Corporations Act 2001* (Corporations Act)  

**Background**

The CFI Bill establishes the CFI, a voluntary carbon offset scheme for the land sector, with the purpose of creating incentives for carbon abatement or avoidance projects in land-use sectors. In support of the CFI, the Registry Bill enshrines in legislation the Australian National Registry of Emissions Units (Registry) and its administrative body (Carbon Credits Administrator) to manage Australia’s emissions units under the Kyoto Protocol and Australian carbon credit units (ACCUs) under the CFI.

By creating the ACCU, a new form of property right, the CFI and its Registry introduce the possibility for fraud and rorting. The Bill alters four existing Acts relating to finance, anti-money laundering and counter-terrorism, extending their authority to cover trade in ACCUs.

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intended to provide additional safeguards to protect purchasers of ACCUs and international units, and to provide deterrence against criminal activities involving the CFI.\(^1\)

The Bill also extends the functions defined under the NGER Act to include the creation of audit reports for the CFI.

Finally, the Bill outlines a series of transitional arrangements for incorporating accounts that existed under the previous administrative Registry into the new statutory Registry, and for audit determinations already existing under the NGER Act.

For further background the reader is referred to the Bills Explanatory Memorandum and to the Bills Digests for the CFI Bill and the Registry Bill.

**Committee consideration**


Both Committees recommended that the Bill be passed.

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Financial implications

The Explanatory Memorandum for the Bill does not separate the financial impact of this Bill from that of the CFI Bill and the Registry Bill. The Explanatory Memorandum for the CFI Bill states:

The total cost of the Carbon Farming Initiative is capped at $45.6 million over four years, with the following profile: $4.4 million in 2010-11, $16.1 million in 2011-12, $13.1 million in 2012-13 and $11.9 million in 2013-14. This includes $4 million to provide information about the scheme to land managers via Landcare.6

Key provisions

Schedule 1—General amendments

Part 1-Amendments

Anti-Money Laundering and Counter-Terrorism Financing Act 2006

Items 1, 2, 3 and 4 make amendments to the AML Act so as to deal with the potential risk of money-laundering through the trade in ACCUs and other emissions units. It will do so by regulating this trade on behalf of another person as a ‘designated service’.

The terms ‘Australian carbon credit unit’ and ‘eligible international emissions unit’ are defined by reference to their meaning in the CFI Bill and the Registry Bill (items 1 and 2 respectively).

Under the AML Act, any financial institution or person who provides a ‘designated service’ must comply with reporting and other obligations. One main example is the obligation to report any suspicious matters or transactions above specified thresholds. Items 3 and 4 amend subsection 6(2), Table 1 of the AML Act which deals with the provision of a ‘designated service’. The terms ‘Australian carbon credit unit’ and ‘eligible international emissions unit’ are inserted so as to capture the trading of these units by an agent on behalf of another person as a ‘designated service’. The effect is to make trading in ACCUs and eligible international emissions units subject to the same reporting and other obligations imposed on a ‘designated service’ under the AML Act.


Because ACCUs and eligible international emissions units will operate as financial products, amendments to the ASIC Act and the Corporations Act are necessary to regulate financial services

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associated with ACCUs and eligible international emissions units. This is particularly important, given that confidence is central to such a novel initiative.

**Item 5** amends the ASIC Act in order to define ACCUs and eligible international emissions units as financial services with the effect of activating the general consumer protection provisions in Part 2 of Division 2 of the ASIC Act. Part 2 Division 2 of the ASIC Act deals with unconscionable conduct and consumer protection in relation to financial services.

**Items 9-11** make similar amendments to the Corporations Act 2001, so as to activate the provisions relating to financial services and markets, and product disclosure, under Chapter 7 of the Corporations Act.

However, **Item 6** restricts 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.

But, it will not include providing a service that is otherwise supplied in relation to a financial product.


In short, amendments to these Acts will allow the appropriate disclosure and exchange of information between administrators.

**Item 7** adds the Carbon Credits Administrator to the list of agencies to which ASIC may disclose information.

The amendment made by **item 8** enables the ACCC to disclose certain information to the Carbon Credits Administrator if the Chair of the ACCC is satisfied that it would enable or assist the Administrator to perform his or her functions.\(^7\)

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\(^7\) The Explanatory Memorandum to the Bill at pp. 9–10 provides a fuller explanation.

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National Greenhouse and Energy Reporting Act 2007

Item 14 provides that 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 Carbon Credits Administrator.

Items 12 through 16 provide for amendments to the NGER Act so as to establish the audit framework for the CFI, which will be the existing audit framework under the Act. Significantly, item 15 provides that the Minister may set out mandatory requirements for registered greenhouse and energy auditors relating to greenhouse and energy audits and CFI audits. The Explanatory Memorandum states that this approach of making the CFI part of the existing audit framework is designed to reduce complexity, promote administrative efficiency and reduce duplication; for example, there will be a single register for qualified assurance auditors.8

Part 2—Transitional provisions

Items 17 to 19 set out transitional arrangements for accounts already registered with the Registry. They also address the arrangements for audit determinations made under section 75 of the NGER Act prior to commencement. Section 75 of the NGER Act enables the Minister to determine requirements to be met by audit team leaders in preparing for and carrying out greenhouse and energy audits and in preparing audit reports.

Item 17 provides that accounts held by either the Commonwealth or another person will continue in existence as Registry accounts. The designation of the various Commonwealth accounts will remain unchanged (item 18).

Item 19 provides that audit determinations made under section 75 of the NGER Act that are in force immediately before commencement will be treated as if they had been made under the amended section 75, hence, registered greenhouse and energy auditors undertaking CFI audits must comply with them.

Schedule 2—Amendments relating to reporting transfer certificates

Schedule 2 of the Bill contains amendments to the NGER Act to allow reporting transfer certificates (RTCs) to be created by GEDO after 30 June 2011 and to ensure existing RTCs continue to have effect beyond 30 June 20119, thus the current restrictive definition of ‘interim financial year’ is no longer

9. RTCs were introduced for the 2008–09 National Greenhouse and Energy Reporting (NGER) year to provide greater reporting flexibility for industry. RTCs allow the voluntary transfer of NGER reporting and record keeping obligations from a controlling corporation – where one member of its group has operational control of a facility – to a member of a different corporate group that has financial control of that facility. Source: Department of Climate Change and

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required and is being repealed (item 1). According to the Explanatory Memorandum, this is designed to permit the continuation of flexible reporting arrangements until there is clear direction on carbon pricing.\textsuperscript{10}


\textsuperscript{10} Explanatory Memorandum, p. 16.

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