

# What do landowners and business operators need to know about carbon credit projects?

Carbon credits have gained increasing interest in the Australian market; encouraged by a combination of the Australian government's ambitious emissions reduction targets and the rising focus by Australian businesses and investors on environmental, social, and governance (ESG) policies, sustainability, and voluntary carbon neutral commitments. We explain what you need to know about carbon credit projects and how you can get involved.

## What is a carbon credit?

The Australian Carbon Credit Unit Scheme (ACCU Scheme, previously known as the Emissions Reduction Fund) is Australia's carbon crediting scheme established in 2015. The ACCU Scheme credits Australian landowners and businesses (called project proponents) for adopting new practices and technologies that either –

1. avoid the release of greenhouse gas emissions, or
2. remove, capture, and sequester (ie store) carbon from the atmosphere.

Project proponents earn one Australian carbon credit unit for every tonne of carbon dioxide equivalent emissions stored or avoided by a project.

## What do you do with a carbon credit?

Carbon credits can be used towards achieving your own carbon neutral targets or they may be sold to businesses which want to do the same.

Carbon emission reduction targets are being mandated or otherwise voluntarily adopted by businesses and governments as part of the global push to reduce greenhouse gas emissions. Businesses are measuring and reporting their carbon emissions and implementing changes or new technologies to achieve real reductions in their emissions output. However, in most cases, business cannot yet operate without producing some carbon emissions.

Once bought or generated, carbon credits can be 'cashed in' with the Clean Energy Regulator (the Regulator) in exchange for a carbon offset certificate. The certificate allows the business to claim carbon neutrality or to offset its emissions where it is unable to achieve real 'zero' emissions by avoidance or reduction strategies.

Businesses which say they are 'carbon neutral' or 'net zero' are not operating on a real zero emission basis but instead are using the ACCU Scheme to offset the emissions they still generate.

## **What is the demand for carbon credits?**

The Australian government is the largest purchaser of carbon credits. Represented by the Regulator, reverse auctions are held periodically where successful bidders enter into delivery contracts to sell existing or future carbon credits to the Australian government.

Otherwise, carbon credits are sold on the private market to state and local governments or businesses voluntarily looking to offset their emissions, or businesses which have been statutorily required to offset their emissions to meet the Australian government's 'safeguard mechanism'. The safeguard mechanism requires the highest greenhouse gas emitting companies to reduce emissions below a baseline or purchase carbon offsets.

The Regulator is in the process of developing an Australian Carbon Exchange to simplify the private sale of carbon credits. In the meantime, the Carbon Market Institute's Carbon Marketplace contains information about projects generating credits and a market directory for organisations selling carbon credits. Alternatively, the Regulator's project register can be searched to identify parties that may have carbon credits for sale.

## **What kind of projects can generate carbon credits?**

Projects are categorised as either emissions avoidance projects or sequestration projects. Some examples include:

1. Livestock – reducing greenhouse gas emissions by feeding dietary additives to milking cows.
2. Agriculture – reducing greenhouse gas emissions from fertiliser in irrigated cotton.
3. Commercial – reducing greenhouse gas emissions by improving the energy performance of a building that is rateable under the National Australian Built Environment Rating System (NABERS).
4. Forestation – vegetation projects, such as reforestation and revegetation, to capture and remove greenhouse gas emissions.

Further examples of the types of projects that can be undertaken are found on the Regulator's website. Importantly, the project must also satisfy the following requirements:

1. The newness requirement – it must be a project that is not already being implemented.
2. The regulatory additionality requirement – the project must be a voluntary project, not a project already required to be carried out by law. An example of a project that would not meet this requirement is a project that involves planting trees where that was already required to satisfy a condition of a development approval.
3. The government program requirement – the project cannot be carried out under another Commonwealth, State or Territory government program or scheme. If the project is already incentivised under another government program, it will be excluded from participating in the ACCU Scheme.

As of July 2023, over 1,588 ACCU Scheme projects have commenced and over 129,964,600 carbon credits have been issued.

## Who can run a project?

A project proponent is the person registered with the ACCU Scheme and is responsible for carrying out the project. An important consideration of conducting an ACCU Scheme project is deciding who the project proponent will be.

This must be considered before applying to register a project and before entering into any agreement with third parties in relation to the project.

To register a project with the ACCU Scheme you must have –

1. the legal right to carry out the project on the project land, and
2. a lawful right to be issued all carbon credits that may be created as a result of the project activities.

The chosen project proponent will be legally responsible for meeting all obligations under the Carbon Credits (Carbon Farming Initiative) Act (CFI Act) for the life of the project.

The project proponent can be a single person, multiple people, or an organisation.

A landowner may authorise another party (such as a tenant or carbon service provider) to register a project as the project proponent.

## What is the process?

The process for participating in an ACCU Scheme project is as follows:

### Pre-registration of project and application

- You must pass the fit and proper person test.
- You must choose whether your project will run for 25 years or for 100 years.
- You must provide the consent of all parties who hold an eligible interest in the land on which the project will run (ie your landlord,

your bank).

### Registration of project

- Once your project is assessed and registered, the project will be declared as an eligible offsets project under the CFI Act.

### Run project, report and audit

- It is now up to you to run the project! You have reporting and auditing obligations which must be fulfilled for the life of your project.
- You can contract with carbon service providers to -
  - run your project (project management)
  - provide regulatory compliance, or
  - assist with reporting and auditing obligations.
- Carbon credits are financial products under the Corporations Act, and you may require an Australian financial services licence to carry on a business in relation to the private sale of carbon credits.
- Carbon credits are also 'personal property' for the purposes of the Personal Property Securities Act and security interests may be registered on the Personal Property Securities Register.

### Claim carbon credits

- You need to create an Australian National Registry of Emissions Units account. This is where your carbon credits are credited once you have claimed them.

### Hold or sell?

- You can sell your credits or use them to offset emissions you generate elsewhere.

## How do you secure an interest in carbon credits?

Once your carbon project is established and registered with the ACCU Scheme, your interest in the project and the carbon credits may be registered on title to your property, depending on the jurisdiction.

A carbon abatement interest provides for the exclusive legal right to the economic benefits of carbon reduction or carbon sequestration on the land. Registration may be important where the landowner intends to sell the land or where a third party, such as a tenant or carbon service provider, is the project proponent and is granted legal ownership of the rights to the carbon abatement interest.

As a landowner, if you are engaging a carbon service provider, your contract with the provider will likely include an obligation for their interest to be registered on title. If you are contracting with a provider, you need to ensure the provider's interest, obligations, and rights to the land are sufficient to undertake the required activities for the project but are sufficiently balanced with your interests in the land. Additionally, you may have requirements from your bank to ensure your interest is registered on title.

As a carbon service provider, depending on the remuneration structure of your agreement with a landowner, there is significant risk in not registering your interest in the carbon project on title to the landowner's property.

Ultimately, the underlying agreement between the provider and the landowner will impact what rights and obligations are passed to the provider under the carbon abatement interest. The underlying agreement and the carbon abatement interest will need to be carefully drafted to ensure the rights of the two parties are sufficiently balanced.

## **What if I buy land with an operational carbon project?**

ACCU Scheme projects can impose obligations which will bind future owners or occupiers of the land. Thorough due diligence and documentation review is required in any land sale or new lease which is subject to an ACCU Scheme project.

### **Permanence obligations**

Carbon stored in vegetation or soils can only offset emissions occurring elsewhere if it is stored permanently. If carbon which has been stored on the land is released back into the atmosphere, for example by fire or the clearing of vegetation, then no emissions offsets would take place and the environmental benefits of the project are lost.

So, carrying out sequestration projects which store carbon on the project land gives rise to permanence obligations. These obligations run with the land and are designed to ensure sequestered carbon is maintained throughout the required period. The permanence obligations run for the length of the permanence period of the project (being either a 25-year period or 100-year period).

Permanence obligations cannot be removed and will continue for the whole of the permanence period. However, a project may be withdrawn or revoked at any time. If a project is withdrawn, any carbon credits earned for the project must be relinquished.

### **Maintenance and relinquishment obligations**

Where carbon stored on the land is lost due to a natural occurrence (such as pests, bushfire, flood) or by deliberate conduct, the Regulator may declare the project to have maintenance or relinquishment obligations.

Relinquishment obligations require a project proponent to give back carbon credits or, if they do not have any spare, to purchase carbon credits to hand back to the Regulator.

Maintenance obligations arise where the project proponent has failed to meet its relinquishment obligations or if the relinquishment obligations are unlikely to be met by the project proponent.

Maintenance obligations require the project proponent to undertake certain actions to maintain the carbon stored on the land and take action to prevent any further loss to carbon stores. Maintenance obligations are published on the ACCU Scheme project register against the specific project.



Maintenance obligations can be removed if the required carbon credits are relinquished, all outstanding penalties for failing to relinquish credits are paid, or if the permanence period of the project expires.

Failure to comply with the above obligations can result in a court imposing a financial penalty for the breach or ordering for the obligations to be observed.

### How can we help?

As the market for carbon credits continues to heat up, it will continue to create new opportunities for businesses and landowners.

Whether you are looking to undertake a carbon sequestration or reduction project on your land, to buy land subject to a project, or to expand your ESG policies and net zero targets, we can assist. Call us to discuss what you need.

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