

# **Issuing, Compliance and Contracting of Australian Carbon Credit Units**

Clean Energy Regulator

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Canberra ACT  
30 April 2024

Dear President  
Dear Mr Speaker

In accordance with the authority contained in the *Auditor-General Act 1997*, I have undertaken an independent performance audit in the Clean Energy Regulator. The report is titled *Issuing, Compliance and Contracting of Australian Carbon Credit Units*. Pursuant to Senate Standing Order 166 relating to the presentation of documents when the Senate is not sitting, I present the report of this audit to the Parliament.

Following its presentation and receipt, the report will be placed on the Australian National Audit Office's website — <http://www.anao.gov.au>.

Yours sincerely



Rona Mellor PSM  
Acting Auditor-General

The Honourable the President of the Senate  
The Honourable the Speaker of the House of Representatives  
Parliament House  
Canberra ACT

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For further information contact:  
**Australian National Audit Office**  
**GPO Box 707**  
**Canberra ACT 2601**

**Phone: (02) 6203 7300**  
**Email: [ag1@anao.gov.au](mailto:ag1@anao.gov.au)**

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<http://www.anao.gov.au>

### **Audit team**

Joshua Francis  
Marcus Newberry  
Lorcan Stevens  
Corinne Horton

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# Audit snapshot

## Auditor-General Report No.24 2023–24

### *Issuing, Compliance and Contracting of Australian Carbon Credit Units*



#### Why did we do this audit?

- ▶ The Australian Government issues Australian Carbon Credit Units (ACCUs). ACCUs are generated by registered projects that reduce emissions or store carbon in line with legislated ACCU methods.
- ▶ ACCUs can be sold by project proponents to the Australian Government or other buyers.
- ▶ The *Carbon Credit (Carbon Farming Initiative) Act 2011* (the CFI Act) establishes the regulatory framework for ACCUs.
- ▶ This audit assessed the Clean Energy Regulator's (CER's) effectiveness in relation to ACCU issuing, compliance, and contract management of ACCU purchases.



#### Key facts

- ▶ At January 2024, 140.1 million ACCUs had been issued to 633 projects.
- ▶ The Australian Government has purchased approximately 62 per cent of issued ACCUs.



#### What did we find?

- ▶ Administration of the issuing, compliance and contracting of ACCUs was largely effective.
- ▶ The development of ACCU methods and the issuing of ACCUs was largely effective.
- ▶ The CER's approach to management of ACCU scheme compliance activities was effective.
- ▶ The CER's management of carbon abatement contracts was largely effective.



#### What did we recommend?

- ▶ One recommendation related to the provision of information to the responsible minister was made to the Department of Climate Change, Energy, the Environment and Water (DCCEEW). Responsibility for this function transferred from the CER to DCCEEW in 2023.
- ▶ DCCEEW agreed to this recommendation.

55%

of ACCUs credited to vegetation and sequestration projects as at 14 January 2024.

15

reverse auctions to contract ACCUs have been run by the Australian Government between 2015 and 2023.

91%

of ACCUs purchased by the Australian Government were contracted through the initial four auctions held in 2015 and 2016.

# Summary and recommendations

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## Background

1. Australian Carbon Credit Units (ACCUs) are issued by the Australian Government through a regulatory framework established under the *Carbon Credit (Carbon Farming Initiative) Act 2011* (the CFI Act). The Clean Energy Regulator (CER) has primary responsibility for administering the ACCU scheme.
2. Under the ACCU scheme, ACCUs are generated by registered projects that reduce emissions or store carbon in line with rules set under legislative instruments called methodology determinations (ACCU methods). Project proponents register projects under an approved ACCU method and generate ACCUs according to the abatement achieved.
3. Project proponents have the option to bid in auctions for a contract to sell ACCUs to the Australian Government. Alternatively, project proponents can sell ACCUs to organisations with emissions reduction obligations under the Safeguard Mechanism or who wish to voluntarily offset their emissions.<sup>1</sup>

## Rationale for undertaking the audit

4. The Australian Government has identified the ACCU scheme will play a role in Australia achieving its 2030 and 2050 emissions reduction targets. This audit provides assurance to Parliament on the CER's regulatory activities in relation to ACCU issuing and compliance, and contract management activities related to ACCU purchases.

## Audit objective and criteria

5. The objective of this audit was to assess the effectiveness of the Clean Energy Regulator's issuing, compliance and contracting activities related to ACCUs.
6. To form a conclusion against the objective, the following criteria were used.
  - Are ACCUs issued in accordance with legislative requirements?
  - Are ACCU compliance activities managed effectively?
  - Are ACCU scheme contracts administered effectively?

## Conclusion

7. Administration of the issuing, compliance and contracting of ACCUs was largely effective. The CER's ACCU issuing, compliance and contracting activities are consistent with the CFI Act and Australian Government frameworks. There are opportunities to address weaknesses in the information systems used to administer the ACCU scheme as well as further improve monitoring and reporting related to compliance and conflict-of-interest declarations.

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1 The Safeguard Mechanism requires facilities that emit more than 100,000 tonnes of covered carbon dioxide equivalent emissions in a financial year to keep their emissions at or below emissions baselines set by the Clean Energy Regulator.

8. The development of ACCU methods and the issuing of ACCUs was largely effective. While the CER and responsible departments effectively administered the development of ACCU methods between November 2020 and February 2023, a CFI Act requirement to provide ongoing ministerial updates of interests declared by Emission Reduction Assurance Committee (ERAC) members was not met. The CER assessed applications for ACCU issuances against the requirements of the CFI Act and ACCU method. Weaknesses in privileged user access controls in the information systems used to administer the ACCU scheme were identified in 2018–19 and the CER's actions to address these weaknesses are ongoing.

9. The CER has implemented an effective approach to ACCU scheme compliance activities. The CER has established and implemented a compliance framework that incorporates the range of regulatory powers provided under the CFI Act. The framework aligns with the guidance and principles outlined in the Australian Government's Resource Management Guide for Regulatory Performance. This includes maintaining and publishing a compliance and enforcement strategy and providing guidance and information to help regulated entities understand their obligations and responsibilities. The CER is implementing ACCU scheme compliance activities. The CER monitors and reports on its performance related to ACCU scheme compliance.

10. The CER's administration of carbon abatement contracts in the ACCU scheme was largely effective. The CER has established an appropriate contract management framework that is consistent with the practices outlined in the Australian Government Contract Management Guide. The CER is implementing actions to improve compliance with entity-wide conflict-of-interest arrangements. The contract management framework has been adjusted to reflect changes in the ACCU scheme, including the introduction of optional delivery contracts and the establishment of a fixed delivery exit arrangements process. Key contract management controls have been implemented each year between 2018 and 2023.

## Supporting findings

### Issuing Australian Carbon Credit Units

11. The CER and responsible department set up and implemented governance arrangements that supported the development and ministerial approval of ACCU methods in line with legislative requirements between November 2020 and February 2023. Improvements can be made to record keeping associated with ministerial appointments to the Emission Reduction Assurance Committee (ERAC). Ongoing ministerial updates of interests disclosed by ERAC members did not occur as required under the CFI Act. (See paragraphs 2.3 to 2.37)

12. The CER's implementation of the ACCU crediting assessment process is largely appropriate. The CER has improved record keeping related to issuing ACCUs. Information provided by project proponents is assessed against the requirements of the CFI Act and relevant ACCU method. The information systems supporting the administration of the ACCU scheme have weaknesses that create a risk that unauthorised or unapproved activities may not be detected in these systems. (See paragraphs 2.38 to 2.57)

### Compliance

13. The CER's compliance framework for the ACCU scheme includes oversight committees, risk management activities, policies, procedures and guidance material. The CER's compliance



policy outlines the compliance activities the CER targets at different types of non-compliance. An ACCU scheme compliance plan, external guidance material, and internal procedures guide how the CER will implement compliance activities. Four risks related to ACCU scheme compliance are monitored through the CER's entity-level risk management framework. (See paragraphs 3.3 to 3.32)

14. The CER uses regulatory powers under the CFI Act to address potential and identified non-compliance. Fit and proper tests and the ACCU issuance process are applied to scheme entry and the issuance of ACCUs. The CER uses the CFI Act's auditing powers to verify the information presented by project proponents. The CER applies enforceable undertakings, ACCU relinquishments and project revocation powers when non-compliance is identified. Information on the outcomes of enforceable undertakings could be more clearly presented on the CER's website. (See paragraphs 3.33 to 3.71)

15. The CER monitors and reports on its performance related to ACCU scheme compliance, including activities and outcomes. Internal monitoring can be improved by reporting on the implementation status of all compliance activities. External reporting would be further improved through the addition of quantitative information on compliance activities and improving the structure of some ACCU scheme compliance related information on the CER's website. (See paragraphs 3.72 to 3.90)

## Contract management

16. The CER has established an ACCU scheme contract management framework for selecting, contracting and purchasing ACCUs. The ACCU contract management framework is consistent with the Australian Government guidance including for managing contract performance, delivery and variations. The CER has implemented actions to improve compliance with its entity-wide conflict-of-interest declaration processes. Probity advisors did not identify any material issues in the 15 ACCU scheme auctions. The CER did not maintain complete records of staff compliance with auction probity plans. (See paragraphs 4.2 to 4.23)

17. The CER is undertaking its carbon abatement contract administration activities in accordance with its contract management framework. The CER is also implementing its procedure to manage applications for fixed delivery exit arrangements. (See paragraphs 4.24 to 4.33)

## Recommendation

**Recommendation no. 1** The Department of Climate Change, Energy, the Environment and Water:  
**Paragraph 2.36**

- (a) improves record keeping practices to demonstrate decisions are consistent with legislative requirements; and
- (b) implements procedures for notifying the responsible minister of interests declared by Emission Reduction Assurance Committee members as required by the *Carbon Credits (Carbon Farming Initiative) Act 2011*.

**Department of Climate Change, Energy, the Environment and Water response: Agreed.**

## Summary of entities' responses

18. The proposed audit report was provided to the CER. An extract of the proposed audit report was provided to DCCEEW. The CER's and DCCEEW's summary responses to the proposed audit report are provided below and their full responses at Appendix 1.

### Clean Energy Regulator summary response

The Clean Energy Regulator (CER) welcomes the Australian National Audit Office's (ANAO) audit into issuing, compliance and contracting of Australian Carbon Credit Units (ACCUs). The ACCU scheme plays a crucial role in addressing climate change and supporting Australia's transition to net zero by 2050, and the CER is committed to this outcome through effective and efficient regulation supported by robust and enduring systems and processes.

The valuable insights produced by the ANAO through this audit will be incorporated into the CER's ongoing administration of the ACCU Scheme as part of our culture of continuous improvement. This will support the ongoing evolution of the Australian carbon market and its pivotal role in Australia's pathway to net zero.

### Department of Climate Change, Energy, the Environment and Water summary response

The department acknowledges the ANAO's audit report extract on the *Issuing, compliance and contracting of Australian Carbon Credit Units*.

The department recognises that the ANAO found that administration of the Australian Carbon Credit Unit (ACCU) method development and the issuing of ACCUs was largely effective.

The department takes its governance obligations including management of conflicts of interest very seriously, and is committed to continuous improvement in its systems and processes to ensure decisions are consistent with all legislative requirements. The department agrees with the ANAO's recommendation. The department considers implementation of the recommendation, which has already commenced, will improve its current processes and support effective management of the ACCU Scheme and other future programs.

## Key messages from this audit for all Australian Government entities

Below is a summary of key messages, including instances of good practice, which have been identified in this audit and may be relevant for the operations of other Australian Government entities.

### Policy/program implementation

- Developing compliance and enforcement strategies, plans and guidance material articulate a regulator's approach to risk and how this informs decision-making. Publishing this material provides guidance and information to help stakeholders understand their obligations and responsibilities.
- Effective regulators establish information systems that support activities to be undertaken in accordance with the relevant legislation and frameworks and enable the regulator to demonstrate this has occurred.

## **Audit findings**

# 1. Background

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## Introduction

1.1 The Clean Energy Regulator (CER) administers the Australian Carbon Credit Units (ACCU) scheme. This involves the CER:

- implementing a regulatory framework for issuing ACCUs established through the *Carbon Credits (Carbon Farming Initiative) Act 2011* (the CFI Act); and
- purchasing ACCUs on behalf of the Australian Government to be used to meet Australia's emissions reduction commitments.

1.2 The Australian Government department that deals with climate change matters, including greenhouse gas abatement programs, has responsibility for policy matters related to the ACCU scheme and supporting ministerial decision-making under the CFI Act. Since 1 July 2022, this department has been the Department of Climate Change, Energy, the Environment and Water (DCCEEW).

1.3 ACCUs are financial products issued by the Australian Government to eligible projects for emissions abatement achieved under the CFI Act. ACCUs represent carbon abatement that can be sold by project proponents to the Australian Government or to organisations to offset greenhouse gas emissions. One ACCU represents one tonne of carbon dioxide equivalent (CO<sub>2</sub>-e) of greenhouse gas that has been abated.<sup>2</sup>

1.4 Under the ACCU scheme, ACCUs are generated by registered projects that reduce emissions or store carbon in line with rules set under legislative instruments called methodology determinations (ACCU methods). Project proponents register projects under an approved ACCU method and generate ACCUs according to the abatement achieved.

1.5 Project proponents have the option to bid in auctions for a contract to sell ACCUs to the Australian Government. Alternatively, project proponents can sell ACCUs on the private market. Private market buyers include organisations with emissions reduction obligations under the Safeguard Mechanism or who wish to voluntarily offset their emissions.<sup>3</sup>

## ACCUs issued and contracted by the Australian Government

1.6 At 14 January 2024, 1,769 projects were registered across 52 ACCU methods.<sup>4</sup> The 140.1 million ACCUs issued have been credited to 633 of the registered projects. Since April 2015,

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2 Carbon dioxide equivalent (CO<sub>2</sub>-e) expresses the greenhouse gas warming effect of other greenhouse gases, such as methane, as an equivalent amount of carbon dioxide that would give the same warming effect as each greenhouse gas that is released or captured by the activity.

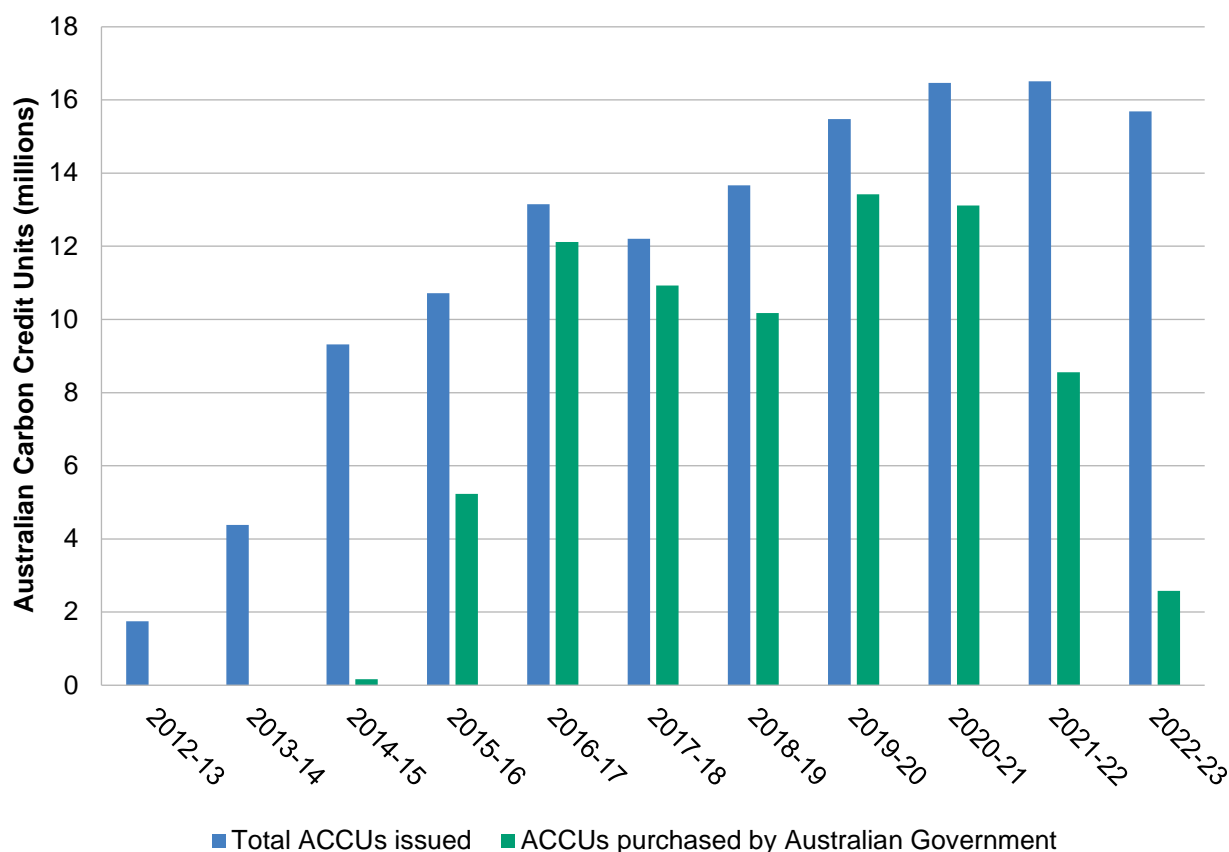
Carbon abatement activities include avoided emissions, such as the burning of methane, or the sequestration of carbon, such as through vegetation management.

3 The Safeguard Mechanism requires facilities that emit more than 100,000 tonnes of covered carbon dioxide equivalent emissions in a financial year to keep their net emissions at or below emissions baselines set by the CER.

4 As at 14 January 2024 and does not include 282 revoked projects. Clean Energy Regulator, *Summary of Register updates*, available at <https://www.cleanenergyregulator.gov.au/ERF/project-and-contracts-registers/project-register> [accessed 2 February 2024].

the Australian Government has held 15 auctions and awarded 612 contracts to purchase ACCUs.<sup>5</sup> At 2 January 2024, the Australian Government has purchased 81.7 million ACCUs out of a total contracted volume of 244.5 million ACCUs.<sup>6</sup> The number of ACCUs issued and purchased by the Australian Government since the ACCU scheme commenced is shown in Figure 1.1.

**Figure 1.1: ACCUs issued and purchased by the Australian Government**



Source: ANAO analysis of CER contract register 14 January 2024.

## Australian Carbon Credit Units scheme

1.7 The ACCU scheme has operated in three forms since the CFI Act commenced in 2011:

- the Carbon Farming Initiative between 2011 and 2014;
- the Emissions Reduction Fund between 2014 and 2023; and
- the ACCU scheme from 2023.

### Carbon Farming Initiative

1.8 The Carbon Farming Initiative began in 2011 as a complementary measure to the Australian Government's Carbon Pricing Mechanism. Entities associated with the agricultural, forestry and

<sup>5</sup> More information on each auction's results is presented in Appendix 4.

<sup>6</sup> Total contracted volume is the amount of ACCUs contracted over the crediting period of the projects. A crediting period is how long a project can generate ACCUs. The crediting period is generally seven years for emissions avoidance projects and 25 years for sequestration projects.

legacy waste emissions sectors of the economy could register projects and earn ACCUs for the carbon sequestered or emissions avoided by these projects. ACCUs could be sold to other entities with liabilities under the Carbon Pricing Mechanism. The Carbon Pricing Mechanism was repealed from 1 July 2014.

1.9 There have been 14.4 million ACCUs surrendered to the Australian Government by organisations with liabilities under the Carbon Pricing Mechanism.<sup>7</sup> This is approximately 10 per cent of all ACCUs issued up to January 2024.

## **Emissions Reduction Fund**

1.10 In November 2014, the Australian Government transitioned the Carbon Farming Initiative to the Emissions Reduction Fund. While the regulatory processes for projects to create ACCUs remained similar to the Carbon Farming Initiative, amendments to the CFI Act allowed the Australian Government to purchase ACCUs through the Emissions Reduction Fund.

1.11 Through the Emissions Reduction Fund, the Australian Government made \$2.55 billion available over 10 years for the purchase of ACCUs. A further \$2 billion was made available for ACCU purchasing in 2018–19. At January 2024, the Australian Government had purchased around 81 million ACCUs, representing approximately 62 per cent of issued ACCUs.<sup>8</sup>

1.12 The Emissions Reduction Fund was complemented by a Safeguard Mechanism designed to prevent large greenhouse gas emitting facilities from increasing their emissions. Organisations whose emissions increased over the allocated baseline were required to purchase ACCUs to offset the emissions in excess of the allocated baseline. At 1 August 2023, almost 1.3 million ACCUs representing approximately 1 per cent of issued ACCUs have been surrendered to the Australian Government by entities to meet obligations under the Safeguard Mechanism.

## **Australian Carbon Credit Units scheme**

1.13 In 2022, the Australian Government transitioned from using the term ‘Emissions Reduction Fund’ to the term ‘ACCU scheme’ for describing ACCU-related regulatory and purchasing activities under the CFI Act.

1.14 In May 2023, the Australian Government reallocated an uncommitted \$1.9 billion from \$4.5 billion that had been allocated to purchasing ACCUs through the Emissions Reduction Fund to fund activities under the Powering Australia Plan. These emissions reduction activities identified in the Powering Australia Plan include continued Australian Government purchasing of ACCUs.<sup>9</sup>

1.15 From 1 July 2023, changes were made to the Safeguard Mechanism to require large greenhouse gas emitting facilities to reduce their emissions in line with Australia’s international

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7 This is the number of ACCUs held by the Australian government in the Australian National Registry of Emissions Units (ANREU) account AU-2037: Commonwealth Surrender Account.

8 ACCU scheme participants can participate in auctions to secure Australian Government carbon abatement contracts. The auctions are run as reverse auctions with contracts awarded to the lowest price bidders. This process was examined in Auditor-General Report No.14 of 2016–17 *Abatement Crediting and Purchasing under the Emissions Reduction Fund*.

9 The Australian Government has not publicly announced the specific amount of funding allocated to Australian Government purchasing of ACCUs under the Powering Australia Plan. In January 2024, the CER advised ANAO that announcing specific amounts could impact bidding behaviour at future auctions.

emissions reduction targets. Facilities that exceed their annual Safeguard Mechanism baseline have the option of purchasing ACCUs from the Australian Government to meet their allocated baseline.<sup>10</sup>

## **Responsibility for administering the *Carbon Credit (Carbon Farming Initiative) Act 2011***

1.16 The CER has administered ACCU crediting and compliance since the commencement of the CFI Act in 2011 and ACCU purchasing since the start of the Emissions Reduction Fund in 2014.

1.17 The CFI Act defines the role of the minister responsible for making decisions on ACCU methods and establishes the Emissions Reduction Assurance Committee (ERAC).<sup>11</sup> ERAC's role includes providing the minister with assessments on the appropriateness of new and existing ACCU methods.

1.18 The Australian Government entity responsible for supporting ERAC in the development and administration of ACCU methods is not specified by the CFI Act. These functions supporting ERAC have moved between the Australian Government department responsible for climate change matters and the CER over the life of the ACCU scheme.<sup>12</sup>

## **Australian Carbon Credit Units scheme processes**

1.19 ACCU scheme processes include ACCU method development, ACCU issuance, ACCU scheme compliance activities, and contract management related to Australian Government ACCU purchasing. A high-level overview of these ACCU scheme processes is presented in Figure 1.2.

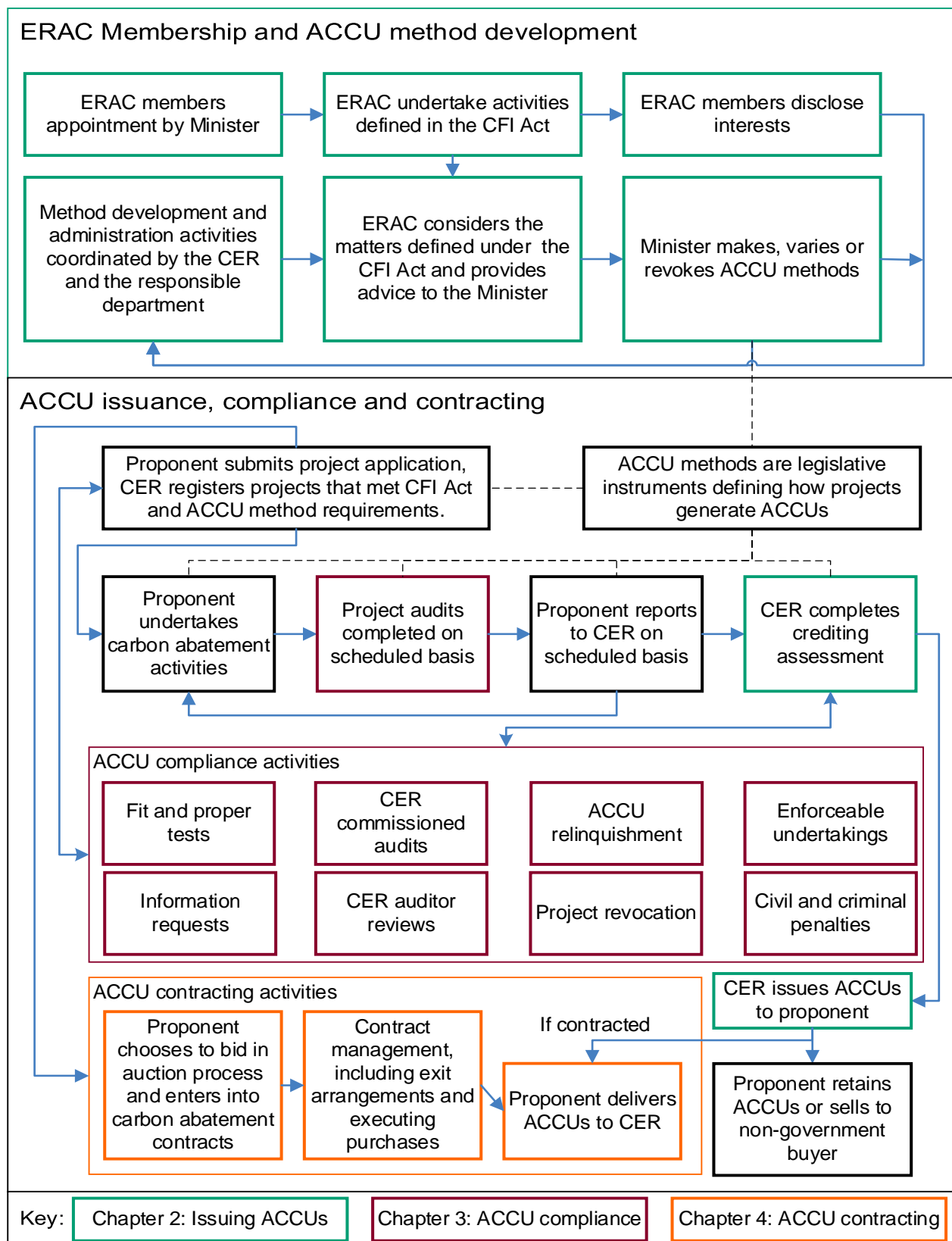
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10 Facilities that exceed their annual Safeguard Mechanism baseline have a number of compliance options to manage their allocated baseline including purchasing ACCUs or Safeguard Mechanism Credits (SMCs) on the secondary market.

11 More information on ERAC's role, activities and membership is available from <https://www.dcccew.gov.au/climate-change/emissions-reduction/emissions-reduction-fund/assurance-committee> [accessed 8 April 2024].

12 ACCU method development and administration functions in support of ERAC are discussed more in Chapter 2.

**Figure 1.2: High-level overview of the ACCU scheme**



Source: ANAO presentation of CFI legislation and CER information.



1.20 ACCU methods are legislative instruments that define how projects will generate ACCUs and are made by the responsible minister. The minister can also vary or revoke existing ACCU methods. The minister must receive advice from ERAC before making decisions regarding the ACCU methods. The CER and the responsible department provide ERAC with ACCU method development and administration support.

1.21 A proponent seeking to generate ACCUs must first apply to the CER to register a project. The CER registers a project after assessing the application against the CFI Act and relevant ACCU method. The project then undertakes the carbon abatement activities and provides reports to the CER. Reporting to the CER is designed to demonstrate carbon abatement activities have been undertaken and the resulting abatement has been measured as required by the CFI Act and relevant ACCU method. The CER undertakes a crediting assessment on submitted reports to inform the decision to issue ACCUs.

1.22 The CER is responsible for compliance activities to maintain the credibility and environmental integrity of the ACCU scheme.<sup>13</sup> Compliance activities performed by the CER under the CFI Act include assessments such as fit and proper tests and the ACCU issuance process; the use of reporting requirements and auditing powers; administrative actions including the relinquishment of ACCUs or project revocation; enforceable undertakings; and civil and criminal penalties.

1.23 ACCU scheme project proponents can choose to bid into auctions for ACCU scheme carbon abatement contracts. Successful bidders operate their ACCU projects and generate ACCUs which are then purchased by the Australian Government at the auction bid price. Project proponents without carbon abatement contracts may choose to hold the ACCUs or sell them on the private market.

## Previous reviews of the Australian Carbon Credit Units scheme

### Auditor-General report

1.24 Auditor-General Report No.14 2016–17 *Abatement Crediting and Purchasing under the Emissions Reduction Fund* examined the CER's administration of ACCU project registration, ACCU abatement crediting, and the first two auctions for the Australian Government's purchase of ACCUs.<sup>14</sup> This report concluded the CER established sound arrangements to manage the crediting and selection of carbon abatement for purchase under the Emissions Reduction Fund. Some opportunities for improving ACCU regulatory processes were identified, including one recommendation to improve the documentation of decision-making when assessing ACCU crediting applications.<sup>15</sup>

### Climate Change Authority reviews

1.25 There is a requirement in the CFI Act for the Climate Change Authority to undertake reviews of the operation of the CFI Act and related legislative instruments every three years. These reviews

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13 Replacement Explanatory Memorandum, Carbon Credits (Carbon Farming Initiative) Bill 2011, 2010–2011, Parliament of the Commonwealth of Australia, Chapter 10 Monitoring and Enforcement, including paragraph 10.4.

14 Activities under the Emission Reduction Fund are now referred to as the ACCU scheme. See paragraphs 1.7 to 1.15.

15 The CER has addressed this recommendation. See paragraphs 2.46 and 2.47.

were conducted in 2014, 2017, 2020, and 2023. Each review has made recommendations to the CER and the Australian Government on a range of issues including carbon markets, scheme integrity, governance, risk management and climate resilience.

### **Australian Government commissioned reviews**

1.26 The *Report of the Expert Panel examining additional sources of low cost abatement* (King Review) was presented in February 2020. Fourteen of its 26 recommendations concerned improvements to the Emissions Reduction Fund in the areas of crediting, method development, and governance. The Australian Government agreed or agreed in principle to all 14 of these recommendations related to the Emissions Reduction Fund.

1.27 The *Independent Review of Australian Carbon Credit Units* (Chubb Review) presented its final report in December 2022. It made 16 recommendations on scheme governance, transparency, method development, and the revocation of the avoided deforestation method. The Australian Government accepted all recommendations in principle.

### **Rationale for undertaking the audit**

1.28 The Australian Government has identified the ACCU scheme will play a role in Australia achieving its 2030 and 2050 emissions reduction targets.<sup>16</sup> This audit provides assurance to Parliament on the CER's regulatory activities in relation to ACCU issuing and compliance, and contract management activities related to ACCU purchases.

1.29 The Joint Committee of Public Accounts and Audit (JCPAA) identified the Emissions Reduction Fund as an audit priority for 2022–23.

### **Audit approach**

#### **Audit objective, criteria and scope**

1.30 The objective of this audit was to assess the effectiveness of the Clean Energy Regulator's issuing, compliance and contracting activities related to ACCUs.

1.31 To form a conclusion against the objective, the following criteria were used.

- Are ACCUs issued in accordance with legislative requirements?
- Are ACCU compliance activities managed effectively?
- Are ACCU scheme contracts administered effectively?

1.32 This audit did not examine:

- the CER's administration of other programs, including the Safeguard Mechanism or the Renewable Energy Target;

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16 Australian Government, *Annual Climate Change Statement 2022*, Department of Climate Change, Energy, the Environment and Water, Canberra, 2022, pp. 40, 45–47, and 67, available from <https://www.dcceew.gov.au/climate-change/strategies/annual-climate-change-statement> [accessed 8 April 2024].

- the responsible Australian Government departments' activities related to the CFI Act, other than the analysis of ministerial briefings related to method administration presented in Chapter 2<sup>17</sup>;
- activities related to organisations' use of ACCUs, such as offsetting emissions or claiming carbon neutrality; or
- the implementation of recommendations arising from the Chubb Review.

## Audit methodology

1.33 To address the audit objective, the Australian National Audit Office (ANAO):

- examined the CER's records of ACCU scheme administration and DCCEEW's records of ministerial advice on ACCU methods and ERAC matters;
- reviewed samples of decisions to issue ACCUs and a range of contract management activities;
- held meetings with officials from the CER and DCCEEW; and
- considered publicly available material related to the effectiveness of the ACCU scheme and material provided to the ANAO through the audit's citizens contribution facility.

1.34 The ANAO received one public contribution and met with this contributor.

1.35 The ANAO has cooperative evidence gathering arrangements in operation with entities. On 3 May 2023 at the commencement of audit fieldwork, the CER advised the ANAO that it was unable to provide certain information to the ANAO on a cooperative basis due to legislative restrictions under the CFI Act. On 30 May 2023, the Auditor-General issued the CER with a notice to provide information pursuant to section 32 of the *Auditor-General Act 1997*. This enabled the CER to provide access to information taking account of legislative requirements. Following receipt of the notice, the CER provided the ANAO with access to relevant information over the course of the audit.

1.36 The audit was conducted in accordance with ANAO Auditing Standards at a cost to the ANAO of approximately \$550,000.

1.37 The team members for this audit were Joshua Francis, Marcus Newberry, Lorcan Stevens and Corinne Horton.

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17 The name of the Australian Government department responsible for climate change matters has changed multiple times since the commencement of the CFI Act in 2011. This report uses the term 'responsible department' to refer to these different departments and specifies the name where necessary for clarity.

## 2. Issuing Australian Carbon Credit Units

### Areas examined

This chapter examines whether the development and approval of Australian Carbon Credit Units (ACCU) methodology determinations (ACCU methods) was consistent with *Carbon Credits (Carbon Farming Initiative) Act 2011* (CFI Act) and if the Clean Energy Regulator (CER) has effectively administered the issuance of Australian Carbon Credit Units.<sup>18</sup>

### Conclusion

The development of ACCU methods and the issuing of ACCUs was largely effective. While the CER and responsible departments effectively administered the development of ACCU methods between November 2020 and February 2023, a CFI Act requirement to provide ongoing ministerial updates of interests declared by Emission Reduction Assurance Committee (ERAC) members was not met. The CER has assessed applications for ACCU issuances against the requirements of the CFI Act and ACCU method. Weaknesses in privileged user access controls in the information systems used to administer the ACCU scheme were identified in 2018–19 and the CER's actions to address these weaknesses are ongoing.

### Areas for improvement

The Australian National Audit Office (ANAO) made one recommendation to the Department of Climate Change, Energy, the Environment and Water (DCCEEW) related to notifying the responsible minister of interests declared by ERAC members as required by the *Carbon Credits (Carbon Farming Initiative) Act 2011*.

The CER can improve controls to address weaknesses in privileged user access identified through ANAO's annual financial statement audits.

2.1 The CER issues ACCUs under the CFI Act. The rules for undertaking ACCU scheme projects and generating ACCUs are defined by ACCU methods established under the CFI Act. To be issued with ACCUs, project proponents must provide the CER with the evidence defined in the relevant ACCU method to demonstrate the amount of carbon abatement achieved by the project.

2.2 Effective regulation of activities related to the issuing of ACCUs requires:

- ACCU methods to be developed and approved in accordance with the CFI Act; and
- the CER to issue ACCUs in accordance with the CFI Act.

### Was the development and approval of methodology determinations consistent with legislative requirements?

The CER and responsible department set up and implemented governance arrangements that supported the development and ministerial approval of ACCU methods in line with legislative requirements between November 2020 and February 2023. Improvements can be made to record keeping associated with ministerial appointments to the Emission Reduction Assurance

<sup>18</sup> Also examined was the support provided by the responsible department in its role advising the responsible minister when appointing members of the Emissions Reduction Assurance Committee (ERAC) and advising the responsible minister on members' interests.

Committee. Ongoing ministerial updates of interests disclosed by ERAC members did not occur as required under the CFI Act.

2.3 ACCU methods are legislative instruments defining the requirements for projects that generate ACCUs. ACCU methods also specify the evidence project proponents are required to submit to the CER to be issued ACCUs. Methods are published on the Federal Register of Legislation and have the structure summarised in Table 2.1.<sup>19</sup>

**Table 2.1: Structure of ACCU methods legislative instruments**

Part	Description	Summary
1	Preliminary	Method starting date, duration, and definitions.
2	Activity description	Briefly defines type of projects that operate under the method.
3	Project requirements	Project specific requirements, which might include how to demonstrate or document requirements such as project areas, additionality, and crediting periods.
4	Net abatement amount	Defines how the quantity of abatement a project achieves is determined.
5	Reporting, record keeping and monitoring	Defines the offset reporting requirements, record keeping requirements, and monitoring requirements.

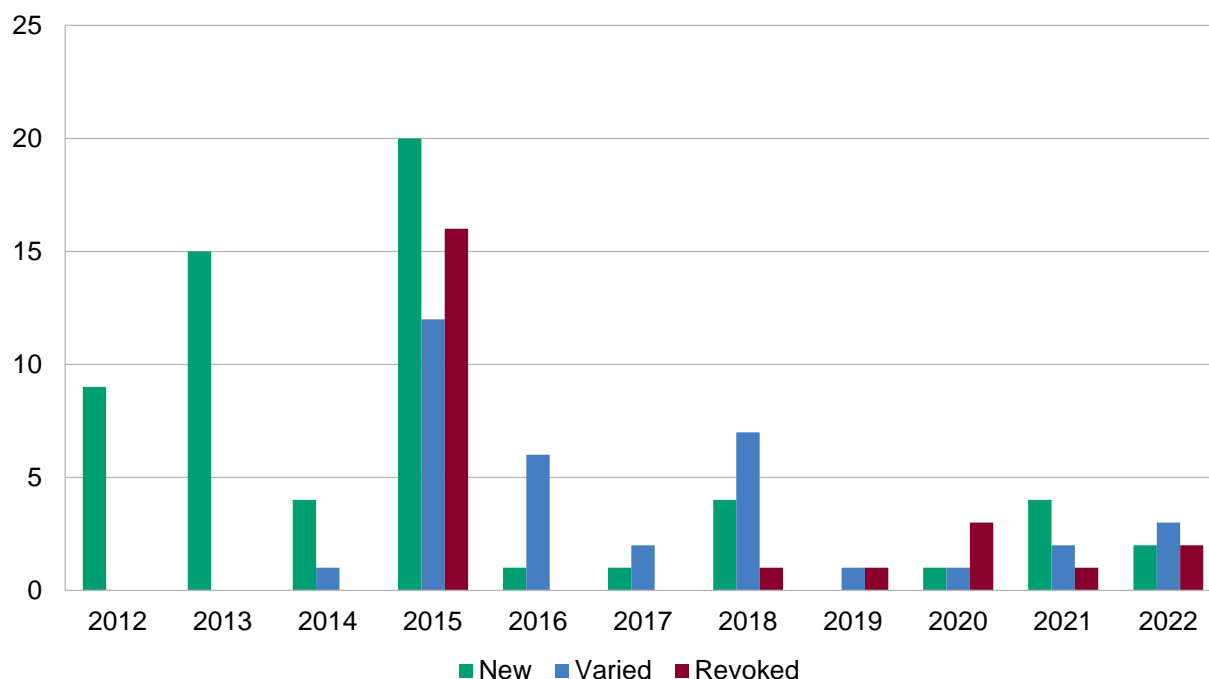
Source: ANAO summary of ACCU methods.

#### *ACCU methods made, varied, and revoked*

2.4 Between the ACCU scheme's establishment in 2011 and 2022, the Federal Register of Legislation shows there have been 61 ACCU methods made under the CFI Act, with 35 variations and 24 revocations (Figure 2.1).

<sup>19</sup> Australian Government, Federal Register of Legislation, Series C2011A00101, available from <https://www.legislation.gov.au/C2011A00101/latest/authorises> [accessed 8 April 2024].

**Figure 2.1: ACCU methods newly created, varied, or revoked in each year since the start of the ACCU scheme**



Source: ANAO analysis of CER records and Federal Register of Legislation.

### *ACCU methods with projects and issued ACCUs*

2.5 At January 2024, 1,769 projects had been registered against 52 ACCU methods. ACCUs have been issued to 633 projects using 36 ACCU methods.<sup>20</sup> More detail on the numbers of ACCU methods, project type and the ACCUs issued is presented in Table 2.2.

**Table 2.2: Overview of ACCU scheme methods, projects, and ACCUs issued**

Method group by project activity type	Active methods	Registered projects	Methods with ACCUs issued	Projects with ACCUs issued	Total ACCUs issued
Vegetation and sequestration <sup>a</sup>	19	863	13	391	77,229,425
Landfill and waste treatments <sup>b</sup>	6	187	6	123	42,630,564
Savanna burning <sup>c</sup>	6	81	4	64	12,921,136
Energy efficiency <sup>d</sup>	5	57	3	23	2,634,140
Agriculture <sup>e</sup>	9	553	7	21	2,312,733
Industrial fugitives <sup>f</sup>	3	14	2	9	2,243,599
Transport <sup>g</sup>	2	11	1	2	149,139

<sup>20</sup> For the remaining 16 ACCU methods that have had registered projects, ACCUs have not been issued to these projects.

Method group by project activity type	Active methods	Registered projects	Methods with ACCUs issued	Projects with ACCUs issued	Total ACCUs issued
Facilities and carbon capture <sup>h</sup>	2	3	0	0	0
<b>Total</b>	<b>52</b>	<b>1,769</b>	<b>36</b>	<b>633</b>	<b>140,120,736</b>

Note a: Vegetation and sequestration methods include avoided clearing of native regrowth; plantation forestry; native forest from managed regrowth; reforestation and afforestation; reforestation by environmental or Mallee plantings; and tidal restoration of blue carbon ecosystems methods.

Note b: Landfill and waste methods include alternative waste treatment; landfill gas; electricity generation from landfill gas; and source separated organic waste methods.

Note c: Savanna burning methods include savanna fire management emissions avoidance and sequestration and emissions avoidance methods.

Note d: Energy efficiency methods include aggregated small energy users; commercial building energy efficiency; high efficiency commercial appliances; industrial and commercial emissions reduction; industrial efficiency and fuel efficiency; industrial equipment upgrades; and refrigeration and ventilation fans methods.

Note e: Agriculture methods include animal effluent management; beef cattle herd management; soil carbon in soil; soil organic carbon sequestration; irrigated cotton fertiliser efficiency; and beef cattle nitrate feed supplements methods.

Note f: Industrial fugitives methods include coal mine waste gas; and oil and gas fugitives methods.

Note g: Transport methods include aviation, and land and sea transport methods.

Note h: Facilities and carbon capture methods include facilities, and carbon capture and storage methods.

Source: ANAO analysis of CER ACCU project register, 14 January 2024 version.

## Legislated process for developing ACCU methods

2.6 The CFI Act provides the responsible minister with the ability to make, vary, or revoke ACCU methods.<sup>21</sup> Under the CFI Act, the responsible minister is required to consider advice regarding ACCU methods' compliance with offsets integrity standards, potential risks, and stakeholder consultations before making a decision related to that method. Before making, varying, or revoking methods the minister must request ERAC provide advice on the proposed new, varied, or revoked method.

2.7 The ERAC is established under the CFI Act and is responsible for providing independent expert advice on ACCU methods to the responsible minister.<sup>22</sup> ERAC provides advice regarding the ACCU methods' compliance with the offsets integrity standards, potential risks and stakeholder consultations before the Minister makes a decision in relation to that method. ERAC is also required by the CFI Act to review ACCU methods to ensure that they remain compliant with the offsets integrity standards. More information on the offsets integrity standards is presented in paragraph 2.16 and Table 2.5.

## Governance arrangements

2.8 Between 2011 and 2020, the Australian Government department responsible for climate change matters developed and administered ACCU methods under the CFI Act.<sup>23</sup> In November

<sup>21</sup> CFI Act, Part 9.

<sup>22</sup> CFI Act, Part 26, Division 1.

<sup>23</sup> The name of the Australian Government department responsible for climate change matters has changed multiple times since the commencement of the CFI Act in 2011. This report uses the term 'responsible department' to refer to these different departments and specifies the name where necessary for clarity.

2020, primary responsibility for ACCU method development and administration was transferred from the Department of Industry, Science, Energy and Resources (DISER) to the CER. In February 2023, these functions were transferred from the CER to the responsible department, now the Department of Climate Change, Energy, the Environment and Water (DCCEEW).

2.9 This report examines the CER’s administration of ACCU methods and provision of ERAC secretariat functions between November 2020 and February 2023, and the responsible department’s support of these activities in its role to provide advice to the relevant minister.<sup>24</sup>

2.10 When responsibility for administration of ACCU methods moved to the CER in 2020, governance arrangements were documented in a series of proposals agreed to in meetings between the responsible department and the CER. These arrangements outlined the roles of the department and the CER in providing information to the minister to support decision-making on ACCU methods in accordance with the CFI Act. These arrangements are set out in Table 2.3.

**Table 2.3: ACCU method decision-making responsibilities between November 2020 to February 2023**

Function and CFI Act references	Responsible department roles	CER roles
When making decision to make, vary, or revoke a method, the minister is required to request advice from ERAC under section 105 of the CFI Act.	Briefs the minister in support of decision-making related to ACCU methods.  Assesses whether abatement is eligible to meet international commitments.	Provides information to the responsible department to assist it in briefing the minister.
Methods meet offsets integrity standards under paragraphs 106(4)(a) and 114(2)(a) of the CFI Act.	Briefs the minister on compliance with offsets integrity standards when making ACCU method decisions.	Provides secretariat functions to ERAC.  When requested by ERAC provides evidence, including data analysis and expert advice.  Provides ERAC’s advice to the department to assist the department briefing the minister.
Risk assessments related to adverse environmental, economic or social impacts likely to arise under paragraphs 106(4)(c) and 114(2)(c) of the CFI Act.	Briefs the minister on any adverse environmental, economic, and social impacts.  Advises CER of any policy or legal issues with an ACCU method.	Provides information to the responsible department to assist it in briefing the minister.
Minister must be advised of consultations with stakeholders under section 123D and subsections 255(g) and (hc) of the CFI Act.	Briefs the minister on stakeholder consultation outcomes when making ACCU method decisions.	Undertakes stakeholder consultations and provides the responsible department with outcomes of stakeholder consultations.

<sup>24</sup> The administration of these functions by the responsible Australian Government department prior to November 2020 and after February 2023 has not been examined by ANAO.



Function and CFI Act references	Responsible department roles	CER roles
Publishing of method decisions and ERAC's advice related to the minister's decision under subsections 106(11), 114(8), and 123(5) of the CFI Act.	<p>Publishes on its website proposed method, ERAC's advice to the minister and non-confidential public submissions.</p> <p>Lodges method legislative instruments with Federal Register of Legislation.</p>	Provides the responsible department with documents to be published on the department's website.

Source: ANAO review of CER records.

2.11 These governance arrangements did not define responsibilities for the appointment of ERAC members and the disclosure of interests by ERAC members.<sup>25</sup> These matters are further examined in paragraphs 2.22 to 2.37.

### *Monitoring and reporting on method development*

2.12 The ACCU method administration involves the development of new methods and review of existing methods.<sup>26</sup> The responsible minister prioritised the development of five new ACCU methods for 2021 and another five new methods for 2022. These new method development priorities were included in the CER's method development workplans for these years with proposed delivery dates at the end of these calendar years.

2.13 Method reviews include periodic reviews and crediting period extension reviews. Periodic method reviews assess if a method remains compliant with the offsets integrity standards. Crediting period extension reviews determine whether to extend the crediting period that projects using that method can earn ACCUs.<sup>27</sup> Method reviews may result in no change, a variation, or revocation of a method; or in a new method being developed.

2.14 The CER maintained an internal method development tracker that set out progress in ACCU method administration activities including developing new ACCU methods; and reviewing, making variations, and revocations to existing ACCU methods. From February 2021 to December 2022, the CER's method development tracker followed the progress in ACCU method administration activities of 13 ACCU methods in 2021 and 14 ACCU methods in 2022. A summary of the monitoring and reporting of progress in ACCU method administration tasks during 2021 and 2022 from the CER's method development tracker is presented in Table 2.4.

**Table 2.4: Assessment of CER's ACCU method development tracker against work plans for 2021 and 2022**

Activity	Workplan 2021	Completed	Workplan 2022	Completed <sup>a</sup>
	Planned	Implemented	Planned	Implemented
New methods	5	5	5	0 <sup>b</sup>

25 CFI Act Part 9, Division 2 including sections 257, 258 and 261.

26 CFI Act Part 9, Division 2; and Part 26, Division 1, section 255.

27 A crediting period extension review is required at the first time a project covered by that ACCU method enters the last 12 months of its crediting period. This type of review considers whether an ACCU method should have its crediting period extended based on whether projects registered under the ACCU method are still achieving carbon abatement that is unlikely to occur in the ordinary course of events.

Activity	Workplan 2021	Completed	Workplan 2022	Completed <sup>a</sup>
Variations	2	2	2	0
Revocations	0	2 <sup>c</sup>	1	1
Method reviews <sup>d</sup>	6	6 <sup>e</sup>	6	3
<b>Total</b>	<b>13</b>	<b>15</b>	<b>14</b>	<b>4</b>

Note a: Analysis up to December 2022 ERAC meeting.

Note b: Due date extended to mid-2023 or 2024.

Note c: The two revocations arose from outcomes of method reviews (crediting period extension reviews).

Note d: Includes both periodic reviews and crediting period extension reviews.

Note e: Includes four completed reviews and two reviews that were closed due to all projects under those methods having been revoked.

Source: ANAO review of CER records.

2.15 The CER met the ministerial priorities for the development of new ACCU methods in 2021. In 2022, new method priorities were carried over to the 2023 method development tracker. In January 2024 the CER advised the ANAO that the Chubb Review and Safeguard Mechanism reforms impacted the development of new ACCU methods in 2022.<sup>28</sup>

## Approvals, variations and revocation of methods

2.16 The CFI Act states the responsible minister must not make a methodology determination unless the minister is satisfied that the determination complies with the offsets integrity standards.<sup>29</sup> The offsets integrity standards are defined in the CFI Act and are outlined in Table 2.5.

**Table 2.5: Offsets integrity standards information provided to the minister**

Standard	Element
Additionality	A method should result in carbon abatement that is unlikely to have occurred had the method activity not been undertaken.
Measurable and verifiable	A method involving removal, reduction or emissions of greenhouse gases should be measurable and capable of being verified.
Eligible carbon abatement	A method should provide abatement that is able to be used to meet Australia's international mitigation obligations.
Evidence-based	A method should be supported by clear and convincing evidence.
Project emissions	Greenhouse gas emissions emitted as a direct result of the project should be deducted.
Conservative	Where a method involves an estimate, projection, or assumption, it should be conservative.

Source: CFI Act, section 133.

2.17 ERAC is established under the CFI Act. One of ERAC's roles is to assess the compliance of methods against the offsets integrity standards. The CFI Act requires ERAC's assessment to be

<sup>28</sup> An overview of changes to the ACCU scheme is presented on paragraphs 1.7 to 1.15 and an overview of the Chubb Review is provided in paragraph 1.27.

<sup>29</sup> CFI Act, Part 9, Division 3.

provided to the responsible minister when the minister makes decisions in relation to ACCU methods.

2.18 The CFI Act requires the following information to be provided to the minister before a decision is made to make, vary, or revoke an ACCU method<sup>30</sup>:

- a draft methodology determination and explanatory statement;
- a hazard assessment report or review identifying any likely adverse work health and safety impacts resulting from method activities;
- a technical assessment report and material prepared for ERAC in response to the report, if a technical assessment is undertaken;
- a summary of stakeholder views and issues raised in consultation process prepared for ERAC, including submissions on adverse social, economic, environmental impacts;
- ERAC advice on whether draft methods meet the offsets integrity standards;
- Australian Government Solicitor or other legal advice on legal compliance; and
- notices of method changes, ERAC advice to minister, and public consultation published on the responsible department's website.

2.19 The ANAO examined the information provided by the CER and the responsible department that supported all 14 ministerial decisions related to ACCU method approvals, variations, and revocations made between November 2020 and February 2023. The CER and responsible department provided the minister with the information required by the legislation, including:

- the compliance of all 14 ACCU methods with the offsets integrity standards; and
- the other types of information required under the CFI Act as listed in paragraph 2.18.

### *Consideration of matters raised about ACCU methods*

2.20 The Australian Public Service Framework for Engagement and Participation provides best practice guidance for Australian Government entities in their interactions with non-government stakeholders.<sup>31</sup> The framework states that engagement with stakeholders involves:

Processes through which public servants and the public interact. These processes seek to unearth and exchange expertise to design, improve and test policy, programs and services. They may also share information with the public about a policy, program or service.

2.21 A group of academics have raised concerns publicly and directly with ERAC about the compliance of some ACCU methods with the offsets integrity standards.<sup>32</sup> ERAC's meeting minutes show that ERAC considered these concerns, including working with the CER and the responsible department to undertake additional analyses. The engagement with stakeholders' concerns

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30 CFI Act, Part 9, Division 2.

31 Commonwealth of Australia, *The Australian Public Service Framework for Engagement and Participation*, Department of Industry, Science, Energy and Resources, Canberra, 2020, available from <https://www.industry.gov.au/sites/default/files/August%202021/document/aps-framework-for-engagement-and-participation.pdf> [accessed 27 February 2024].

32 The ERAC's responses to stakeholder concerns about ACCU methods meeting the offsets integrity standards are available from <https://cer.gov.au/schemes/australian-carbon-credit-unit-scheme/accu-scheme-methods/closed-methods> (see the Vegetation and sequestration methods heading) [accessed 27 February 2024].

regarding ACCU scheme methods is consistent with the Australian Government framework on engagement and participation. An example of ERAC's consideration of these concerns is presented in Case study 1.

#### Case study 1. Consideration of concerns with the human induced regeneration ACCU method

Concerns were raised about the human induced regeneration (HIR) ACCU method and whether it continued to meet the offsets integrity standards.<sup>a</sup> ERAC undertook a range of engagement activities related to these concerns, including:

- discussing these concerns in 15 ERAC meetings between 9 March 2021 and 23 June 2022;
- recording 14 ERAC action items related to HIR ACCU method concerns between 9 March 2021 and 23 June 2022;
- meeting with one of the academics raising the concerns on 22 June 2021;
- corresponding with the academics raising the concerns on four occasions;
- engaging with the CER, the responsible department, and the Commonwealth Scientific and Industrial Research Organisation (CSIRO) in assessing these concerns;
- commissioning a study external to the CER and the responsible department, then commissioning a review of that study to identifying the usefulness of the approaches developed in the study for future compliance assessments of ACCU vegetation projects; and
- publishing these reviews and related material on the CER's public website.<sup>b</sup>

Note a: Carbon Credits (Carbon Farming Initiative) (Human-Induced Regeneration of a Permanent Even-Aged Native Forest—1.1) Methodology Determination 2013. This method was automatically repealed on 1 October 2023 as part of the sunset of legislative instruments. No new ACCU projects can be made using this method from this date, while existing projects that have started their crediting period will continue to operate <https://cer.gov.au/schemes/australian-carbon-credit-unit-scheme/accu-scheme-methods/closed-methods> (see the Vegetation and sequestration methods heading). [accessed 27 February 2024].

Note b: This material was moved to DCCEEW's website following the transfer of ERAC secretariat functions from CER to DCCEEW and is available from <https://www.dcceew.gov.au/climate-change/emissions-reduction/emissions-reduction-fund/assurance-committee> [accessed 8 April 2024].

## Appointment of ERAC members

2.22 During the period November 2020 and February 2023 when the CER held primary responsibility for ACCU method development and administration, the relevant department was responsible for supporting the responsible minister to make ERAC appointments.<sup>33</sup>

2.23 Under the CFI Act, ERAC members must be appointed by the minister.<sup>34</sup> The CFI Act also specifies requirements relating to the experience of the person to be appointed, maximum period of appointment, and the disclosure of any conflicts of interest to the minister.<sup>35</sup>

33 As outlined in paragraph 2.11, responsibility for these functions were not included in governance arrangements between the CER and relevant department. Over the course of the audit, both the CER and DCCEEW advised the ANAO these matters were the responsibility of the department. The relevant departments were DISER up to 30 June 2022 and DCCEEW following machinery of government changes that came into effect from 1 July 2022.

34 CFI Act, section 257.

35 CFI Act, Part 26, Division 2.

2.24 The ANAO reviewed seven ministerial briefings for 16 appointments and reappointments of ERAC members between April 2020 and March 2023 to assess if these appointments were supported by evidence demonstrating all CFI Act requirements had been met.

2.25 The requirements for appointment to be made by ministerial written instrument and to be less than five years were met for all appointments.<sup>36</sup>

2.26 A disclosure of appointees' interests that conflict or could conflict with proper performance of their duties were included with the ministerial briefings for 14 of the 16 appointments.<sup>37</sup> The rationales provided by the department for not including disclosures of interest for two of the 16 appointments is inconsistent with the CFI Act. The CFI Act does not include any exceptions to requirements for disclosure of ERAC members interests to the minister.

2.27 Departmental advice on the CFI Act requirement for responsible ministers to be satisfied ERAC appointees have 'substantial experience or knowledge and significant standing in at least one field of expertise' relevant to ERAC functions was not presented consistently across seven ministerial briefings for 16 appointments and reappointments as:<sup>38</sup>

- nine appointments were supported by a departmental assessment that this requirement was met and information such as a curriculum vitae;
- four appointments were supported with information such as a curriculum vitae, but did not include a department assessment this requirement had been met;
- one appointment was supported by a departmental assessment but no information such as a curriculum vitae was included with the briefing; and
- the remaining two appointments were not supported by either a departmental assessment this requirement was met or the inclusion of information such as curriculum vitae in the appointment briefs.

2.28 The records of these ministerial briefings retained by DCCEEW varied in format and often did not present departmental advice clearly against all relevant requirements of the CFI Act. DCCEEW did not have complete records of the ministerial briefings and decisions.<sup>39</sup> The issues with record keeping lessen the department's ability to demonstrate compliance with the CFI Act and that appropriate briefings were provided to ministers.

### *Disclosures of interest by ERAC members*

2.29 The CFI Act requires ERAC members to:

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36 CFI Act, subsection 257(1) and section 258.

37 CFI Act, section 261.

38 CFI Act, subsection 257(2). Correspondence from the responsible ministers to either the ERAC appointees or the Prime Minister provided evidence the responsible ministers formed the view appointees met this CFI requirement.

39 In addition to the variation in formats and completeness of ministerial briefing records, the department was also unable to locate the signed ministerial briefing supporting five of the 16 appointments.

More detail on DCCEEW's records management following the machinery of government changes establishing DCCEEW is presented in Appendix 4 of Auditor-General Report No.10 of 2023–24, *Governance of Climate Change Commitments*, ANAO, Canberra, 2024, available from <https://www.anao.gov.au/work/performance-audit/governance-climate-change-commitments#27-1-appendix4recordsmanagement> [accessed 8 April 2024].

- disclose the nature of any interests related to the matter being considered or about to be considered in a meeting of ERAC<sup>40</sup>; and
- give written notice to the responsible minister of ‘all interests, pecuniary or otherwise, that the member has or acquires and that conflict or could conflict with the proper performance of the member’s functions’.<sup>41</sup>

2.30 The CFI Act also specifies actions that must be taken when ERAC members disclose an interest to an ERAC meeting. These actions include the disclosure and related determinations being recorded in the minutes.

2.31 These CFI Act requirements are supported by an ERAC Disclosure of Interest Policy. The policy:

- requires that ERAC members complete a personal interest declaration prior to appointment and highlights a continuing obligation to update this declaration<sup>42</sup>;
- outlines that ERAC members have an ongoing obligation to inform the ERAC chair and ERAC secretariat when there is a material change in the matters in the personal interest declaration or new disclosures are made; and
- states the ERAC secretariat will notify the minister of declared conflicts of interest as they are identified.

2.32 A disclosure of interests register was maintained by the ERAC secretariat. This register was included in all meeting packs of the 25 scheduled ERAC meetings reviewed by the ANAO. Declarations of interests and decisions on how ERAC would handle the declarations were recorded in ERAC meeting minutes and the disclosure of interests register reviewed by ANAO.

2.33 The responsible minister was not advised of changes in ERAC members’ interests managed through the disclosure of interests register maintained by the ERAC secretariat, except in one instance where a disclosure was included as part of an approval brief for an ACCU method. This failure to advise the responsible minister of the updated declarations was inconsistent with the requirements of section 261 of the CFI Act and the ERAC Disclosure of Interest Policy.

2.34 Advice provided to the ANAO in February 2024 by CER and DCCEEW indicates arrangements for transferring the information from the ERAC secretariat operating within CER to the relevant department responsible for briefing the minister were not established.<sup>43</sup> Responsibility for this requirement of the CFI Act was not included in the governance arrangements examined in paragraphs 2.8 to 2.11.<sup>44</sup>

2.35 DCCEEW advised the ANAO in February 2024 that the department has commenced updating the processes related to ERAC appointments and providing written notice of ERAC members’ declared interests to the responsible minister. As at March 2024 these activities had not yet been completed.

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40 CFI Act, section 262.

41 CFI Act, section 261.

42 As outlined in paragraph 2.26, the provision of declarations to the minister were made in 14 of the appointments reviewed by the ANAO.

43 In the period November 2020 to February 2023, the department was responsible for briefing the responsible methods and the CER was responsible for the ERAC secretariat.

44 The ERAC secretariat transferred from CER to DCCEEW in February 2023.

## Recommendation no. 1

2.36 The Department of Climate Change, Energy, the Environment and Water:

- (a) improves record keeping practices to demonstrate decisions are consistent with legislative requirements; and
- (b) implements procedures for notifying the responsible minister of interests declared by Emission Reduction Assurance Committee members as required by the *Carbon Credits (Carbon Farming Initiative) Act 2011*.

**Department of Climate Change, Energy, the Environment and Water response:** *Agreed.*

2.37 *The department is committed to improving its management of information in alignment with legislative requirements as identified in the audit report. The department is implementing an updated process to provide written notice of Emissions Reduction Assurance Committee members' declared interests to the responsible minister. In addition, the department is implementing an information assets management policy to improve record keeping practices and a program-specific checklist to demonstrate that decisions are consistent with legislative requirements.*

## Did the Clean Energy Regulator appropriately issue Australian Carbon Credit Units to projects?

Information provided by project proponents is assessed against the requirements of the CFI Act and relevant method prior to ACCUs being issued. The information systems supporting the administration of the ACCU scheme have weaknesses that create a risk that unauthorised or unapproved activities may not be detected in these systems.

2.38 All participants in the ACCU scheme are required to report on their projects by submitting ACCU crediting applications to the CER at regular intervals.<sup>45</sup> The CER assesses these crediting applications to determine if ACCUs are to be issued to the project, or if compliance actions are required. The CER's entity-level risk register identifies the importance of the ACCU crediting process by<sup>46</sup>:

- including an entity-level risk that 'participants are issued ACCUs they are not eligible to receive'; and
- identifying the ACCU crediting process as a 'high-impact, preventative' control to mitigate the entity-level risk that 'ACCU scheme administration does not support abatement in an evolving carbon market'.

45 Participants can choose when to report, but they must report within the minimum and maximum reporting intervals and during the projects crediting period. Reporting periods can range from six months to two years for emissions avoidance projects or five years for sequestration projects. If the net abatement for the period is 2,000 tonnes CO<sub>2</sub>-e or more the reporting periods can be less than six months. The first reporting period begins at the start of the project's crediting period, the next reporting period is immediately after the previous reporting period. Project reports must be submitted to the CER within six months of the reporting period unless the ACCU project method specifies differently.

46 The CER's entity-level risk management framework is examined in paragraphs 3.25 to 3.32.



2.39 Auditor-General Report No.14 of 2016–17 *Abatement Crediting and Purchasing under the Emissions Reduction Fund* (the 2016–17 report) reviewed the CER’s crediting of ACCUs up to October 2015 and found<sup>47</sup>:

- appropriate arrangements were in place to assess the carbon abatement claims of fund projects against fund method requirements;
- ACCUs credited to projects had been accurately calculated according to fund method requirements and recorded in public registers; and
- improvements could be made to the record keeping to allow the CER to better demonstrate the appropriateness of regulatory decision-making.<sup>48</sup>

2.40 The ANAO has examined the CER’s ACCU crediting between 2018 and 2023 to assess if the improvements identified in the 2016–17 report have been implemented by the CER, and if the CER continues to appropriately implement ACCU crediting assessments.

### **Information required to be submitted with ACCU crediting applications**

2.41 The CFI Act and the CFI Rule define the information required to be submitted with all applications for ACCUs to be credited to registered projects.<sup>49</sup> The relevant method for each project also identifies additional method-specific requirements related to reporting, evidence, and auditing to be included with ACCU issuance applications. Information is submitted in three parts for each ACCU issuance application: a certificate of entitlement application; a project offset report with supporting evidence; and an audit report when required.

#### *Certificate of entitlement application*

2.42 The certificate of entitlement application is a web-based form that collects information about the status of the project and amount of abatement claimed. This form requires declarations from the applicant that the project continues to meet legislated requirements to be a registered ACCU project. These declarations include meeting the fit and proper tests; continuing to hold the legal right to undertake the project; compliance with record keeping requirements; and not subject to any requirements to relinquish ACCUs.

#### *Project offsets report and supporting evidence*

2.43 The project offset report and supporting evidence outline the project’s abatement achievements over the reporting period. The information required to be presented in the project offset report is set out in the CFI Act and the relevant ACCU method. Depending on the specific

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47 Auditor-General Report No.14 of 2016–17 *Abatement Crediting and Purchasing under the Emissions Reduction Fund*, paragraphs 11, 12 and 3.1 to 3.21.

48 *ibid.*, paragraph 3.4. Recommendation 1:

The Clean Energy Regulator should ensure that appropriate documentation is retained to demonstrate the rationale for undertaking routine or detailed assessments of abatement crediting applications and that all relevant abatement crediting assessment criteria have been addressed during streamlined assessments.

49 This includes the format and specific information requirements in the certificate of entitlement application, the project offset report, and the third-party audit. Relevant parts of the CFI Act and CFI Rule include Part 2 Issue of Australian carbon credit units in respect of offsets projects; Part 6 Reporting and notification requirements; Part 11 Australian carbon credit units; Part 17 Record keeping and project monitoring requirements; and Part 19 Audits.



ACCU method supporting evidence includes measurement reports, remote sensing data, regulatory approvals, modelling outputs, and evidence of expenses.

### *Audit reports*

2.44 Audit reports must be prepared by an auditor registered under the *National Greenhouse and Energy Reporting Regulations 2008*. These audit reports are required to provide reasonable assurance the project offset report is prepared in accordance with the relevant sections of the CFI Act and there have been no changes that may lead to revocation of the project. Each project is subject to a minimum of three scheduled audits.<sup>50</sup> Additional audits must be submitted with applications claiming more than 100,000 ACCUs.<sup>51</sup> Auditing in the ACCU scheme is further examined in paragraphs 3.45 to 3.56.

### **Assessment of applications to issue ACCUs**

2.45 A summary of how the CER assesses ACCU crediting applications and an overview of the ANAO's analysis of these assessments is presented in Table 2.6. To assess the appropriateness of the CER's issuance of ACCUs between 2018 and 2023, the ANAO completed two sample-based reviews of 283 crediting applications:

- a process review of 257 approved ACCU crediting applications to provide assurance that five steps of the ACCU crediting assessment were completed<sup>52</sup>; and
- a crediting assessment review of 26 approved crediting applications and the supporting evidence to provide assurance that the CER's assessments and approvals of ACCU credit applications were appropriate when compared to the information and evidence submitted with the crediting application.<sup>53</sup>

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50 CFI Rule, section 75. At January 2024, alternative assurance arrangements under the section 7 of Carbon Credits (Carbon Farming Initiative) (Audit Thresholds) Instrument 2015 reduced the number of scheduled audits for 'Low Risk Environmental Planting Projects' that meet specific conditions.

51 Carbon Credits (Carbon Farming Initiative) (Audit Thresholds) Instrument 2015, section 6.

52 These 257 credit applications were reviewed across 10 rounds of testing undertaken between 2018 and 2023. Tested crediting applications were randomly selected from the populations of ACCU crediting applications processed by the CER since the previous round of ANAO testing.

53 The 26 crediting assessments reviewed were selected using two separate sampling approaches: a random sample of 16 approved crediting applications; and a targeted sample of 10 large approved crediting applications with more than 250,000 ACCUs issued from each application. Both samples were drawn from a population of 4,800 crediting applications considered by the CER between July 2018 and June 2023.

**Table 2.6: ANAO analysis of CER ACCU crediting assessments**

Summary of the CER's assessment of ACCU crediting applications	ANAO analysis of CER implementation of ACCU crediting assessments
<p><b>Application submission and determination of assessment type</b></p> <ul style="list-style-type: none"> <li>Project crediting applications are submitted online and contain the information outlined in paragraphs 2.41 to 2.44.</li> <li>Applications are then subject to either primary or detailed assessment based on risk. Primary assessments for lower risk applications involve an assessor and an approver. Detailed assessment for higher risk applications involve an assessor, a reviewer and an approver.</li> </ul>	<p>◆</p> <ul style="list-style-type: none"> <li>All 283 applications reviewed by the ANAO had been submitted through the CER's website.</li> <li>The CER implemented the recommendation from the 2016–17 Auditor-General's report to document the risk assessments for determining the type of crediting assessment, see paragraphs 2.46 and 2.47.</li> <li>The 26 applications examined in the ANAO's crediting assessment review all had appropriately documented risk assessments.</li> </ul>
<p><b>Crediting Application Assessment</b></p> <ul style="list-style-type: none"> <li>Assess the application using the relevant method's assessment tool.</li> <li>If further information is required, the CER use its information request powers under the CFI Act.</li> </ul>	<p>◆</p> <ul style="list-style-type: none"> <li>All 283 applications reviewed by the ANAO had a completed assessment tool. For the 26 applications included in the ANAO's crediting assessment review, the assessments and decisions recorded in the tools were considered appropriate when compared to the supporting information provided by the project proponent.</li> <li>The audit requirements for all 26 applications in ANAO's crediting assessment review were up to date. The ANAO has not identified any instance of ACCUs being issued when a third-party audit opinion would prevent ACCU crediting, see paragraph 3.53.</li> </ul>
<p><b>Finalise and issuing ACCUs</b></p> <ul style="list-style-type: none"> <li>Once the assessment is complete, a decision pack is finalised and the outcome is recorded on the CER's information system.</li> <li>Following approval, the Australian National Registry of Emissions Units (ANREU) system is used to issue ACCUs to the participant. An abatement statement is sent to the project primary contact.</li> </ul>	<p>◆</p> <ul style="list-style-type: none"> <li>All 283 applications reviewed by the ANAO had complete, documented assessments, reviews when required, and approvals.</li> <li>For all 257 applications sampled for ANAO's process review, the transfer of ACCUs to the project's ANREU account had been completed and amount of ACCUs transferred matched the abatement statement issued.</li> </ul>

Key: ◆ Appropriately implemented ▲ Some issues with implementation ■ Not implemented.

Source: ANAO analysis.

### *Addressing documentation recommendation from the 2016–17 report*

2.46 The CER has addressed recommendation 1 from the 2016–17 report related to improving the level of documentation underpinning some areas of regulatory decision-making. In November

2017, the CER considered this recommendation implemented after incorporating the risk review of each application into an information system workflow.<sup>54</sup>

2.47 For the 26 crediting applications approved between 2018 and 2023 examined in the ANAO's crediting assessment review:

- all had documented risk assessments retained on each application's record that identified the basis for a routine or detailed crediting assessment; and
- assessment and decisions for both routine and detailed assessments were documented in the same format, and all relevant abatement crediting assessment criteria had been addressed.<sup>55</sup>

### *Review of crediting application assessments*

2.48 The CER documents the analysis, review, and decision of ACCU issuance applications using crediting assessment tools. Each specific ACCU method has a credit assessment tool designed to capture the specific requirements of the method. The 26 crediting assessments reviewed by the ANAO used seven different ACCU method specific crediting assessment tools.<sup>56</sup>

2.49 In all 26 applications in the ANAO's crediting assessment review, the CER had assessed the application met the CFI Act and Rule requirements relevant to ACCU crediting applications, including:

- the requirements for the format of the application and the information to be provided with the application have been met<sup>57</sup>; and
- the matters required to be covered by the assessor's recommendation and the approver's decision.<sup>58</sup>

2.50 The CER's crediting assessment also includes method specific assessments that support the decision to issue ACCUs. These method specific assessments were completed for all 26 crediting assessments reviewed in detail by the ANAO. The CER's assessment was consistent with the evidence supplied by the project proponent. An example of method specific assessments applied to ACCU crediting applications for human induced regeneration (HIR) projects is presented in Case study 2.

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54 Applications assessed as higher risk require a detailed assessment. When compared to the routine assessment process, the detailed assessment process involves an additional staff member reviewing the application and final approval from a more senior decision-maker.

55 The ACCU credit process reviewed in the 2016–17 Auditor-General Report No.14 documented routine and detailed assessment in different formats. The format used for routine assessments reviewed for the 2016–17 report did not show all routine assessments were consistent with CFI Act requirements. See paragraphs 3.10 to 3.13 of the 2016–17 report for more detail.

56 The types of ACCU methods in the ANAO's crediting assessment review were: human induced regeneration (nine applications sampled); avoided deforestation (five applications sampled); landfill gas (five applications); savanna fire (four applications); and vegetation management (three applications).

57 CFI Act, sections 13 and 76; and CFI Rule, section 7.

58 These matters are: issuing an abatement statement consistent with the CER's assessment of the application as required under CFI Act, subsections 11(2) and 15(2); approving the approved amount of ACCUs to the applicant's ANREU account as required under CFI Act, subsection 11(6) and section 141; and updating of the ACCU scheme project register with information relating to the abatement statement as required under CFI Act, sections 160 and 167.

## Case study 2. ACCU crediting assessment for human induced regeneration (HIR) projects

The nine crediting assessment tools related to human induced regeneration (HIR) projects reviewed by the ANAO documented the CER's HIR method specific assessment activities. These HIR specific crediting assessments involved:

- determining whether requirements related to ongoing scheme participation such as land titles, fit and proper person test and regulatory approvals continued to be met for the projects;
- checking the ACCU method-specific calculations of net abatement for HIR projects, the modelling outputs of either the Reforestation Modelling Tool and the Full Carbon Accounting Model, depending on the version of the HIR method used by the project; and
- reviewing supplied evidence showing compliance with the HIR method, including in relation to:
  - if excluded activities or disturbance events have occurred in the project area;
  - the exclusion of pre-existing forest cover from carbon estimation areas;
  - the carbon estimation areas continuing to meet the HIR method's requirements; and
  - progress towards the carbon estimation areas reaching forest cover potential.

2.51 In all 26 applications included in the ANAO's crediting assessment review, the CER had documented each project's compliance with the relevant ACCU method's audit requirements. The CER's crediting of ACCUs in these 26 applications was supported by the assurance opinions. The CER's use of audits to support compliance with the CFI Act is further examined in paragraphs 3.45 to 3.56.

### Information systems supporting the issuance of Australian Carbon Credit Units

2.52 The ACCU issuance process occurs through the CER's information systems. These information systems are built on a customer relationship management (CRM) software platform that includes<sup>59</sup>:

- a client portal where project proponents submit their crediting application and supporting evidence;
- a series of internal workflows, databases and an electronic record management system that support and document the CER's assessment and decisions related to ACCU crediting applications; and
- the Australian National Registry of Emissions Units (ANREU) system that supports the issuance, holding, transfer, and acquisition of ACCUs.

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<sup>59</sup> These information systems are built on a customer relationship management (CRM) software platform. The CRM software platform also supports the ACCU scheme contracting process described in Chapter 4.

2.53 In 2018–19, the ANAO identified weaknesses in user management controls in both the CRM and ANREU.<sup>60</sup> These were raised as audit findings through the financial statements audit process. These weaknesses related to the monitoring of users with privileged access such as administrator roles. An appropriate user control environment manages the risk of privileged users undertaking inappropriate or unauthorised actions through independent review and verification of the activities of these users.<sup>61</sup>

2.54 In the ANAO's 2021–22 financial statements audit, the ANAO identified additional weaknesses and made further audit findings.<sup>62</sup>

- Weaknesses in change management controls for CRM. These weaknesses related to segregation of duties, documentation and approval of changes made in the production environment of the CRM.
- Further weaknesses in user management access controls for ANREU and CRM as privileged user monitoring controls had not been implemented or relied on information that could have been modified by privileged users reducing the effectiveness of these controls.

2.55 The CER implemented a series of actions to improve the control environment for the CRM and ANREU between 2018–19 and 2022–23.

- Reducing the number of users with ANREU administrator access by 75 per cent in February 2020.
- Implemented privileged identity management processes including alerts, emails, and independent reviews in 2020–21. These resolved the 2018–19 finding in relation to ANREU and improved the control environment for the CRM.
- Undertaking work in 2023 to address the weaknesses identified in 2021–22. At August 2023, the ANAO's assessment is that CER's control environment for the CRM and ANREU is not yet fully effective for detecting unauthorised changes.

2.56 There remains a risk that unauthorised or unapproved activities occur in these systems and these activities are not detected in a timely manner.<sup>63</sup> The ANAO will review CER's progress in addressing these audit findings as part of the 2023–24 financial statements audit.

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60 Auditor-General Report No.20 of 2019–20 *Audits of the Financial Statements of Australian Government Entities for the Period Ended 30 June 2019*, paragraphs 4.7.37 to 4.7.40, available from <https://www.anao.gov.au/work/financial-statement-audit/audits-financial-statements-australian-government-entities-period-ended-30-june-2019> [accessed 8 April 2024].

61 For example, impersonating other users or modifying records.

62 Auditor-General Report No.8 of 2022–23, *Audits of the Financial Statements of Australian Government Entities for the Period Ended 30 June 2022*, available from <https://www.anao.gov.au/work/financial-statement-audit/audits-the-financial-statements-australian-government-entities-the-period-ended-30-june-2022> [accessed 8 April 2024].

63 Auditor-General Report No.9 2023–24, *Audits of the Financial Statements of Australian Government Entities for the Period Ended 30 June 2023*, ANAO, Canberra, 2024, paragraphs 4.3.62 to 4.3.65, available from <https://www.anao.gov.au/work/financial-statement-audit/audits-the-financial-statements-australian-government-entities-the-period-ended-30-june-2023> [accessed 8 April 2024].

## **Changes to the crediting assessment process**

2.57 In late 2022, the CER commenced a project to transition the crediting assessment tool from a spreadsheet template to integrated workflows in the CER's information systems. The CER intends the transition to integrated workflows to improve the efficiency of its assessments and increase data analytics capabilities. At the time of the ANAO's fieldwork for this performance audit, the transition had recently commenced and the ANAO has not tested the effectiveness of this new approach.

## 3. Compliance

### Areas examined

This chapter examines whether the Clean Energy Regulator (CER) has implemented an effective compliance approach for the Australian Carbon Credit Unit (ACCU) scheme under the *Carbon Credits (Carbon Farming Initiative) Act 2011* (CFI Act).

### Conclusion

The CER has implemented an effective approach to ACCU scheme compliance activities. The CER has established and implemented a compliance framework that incorporates the range of regulatory powers provided under the CFI Act. The framework aligns with the guidance and principles outlined in the Australian Government's Resource Management Guide for Regulatory Performance. This includes maintaining and publishing a compliance and enforcement strategy and providing guidance and information to help regulated entities understand their obligations and responsibilities. The CER is implementing ACCU scheme compliance activities. The CER monitors and reports on its performance related to ACCU scheme compliance.

### Areas for improvement

The Australian National Audit Office (ANAO) identified six opportunities for the CER to further improve monitoring and reporting related to ACCU scheme compliance.

3.1 The CFI Act's explanatory memorandum states that effective enforcement arrangements are 'vital to the credibility of the [ACCU] scheme' and non-compliance could bring the scheme into disrepute.<sup>64</sup>

3.2 To assess if the CER has implemented an effective approach to ACCU compliance activities, the ANAO examined if the CER:

- established an appropriate compliance framework for the ACCU scheme;
- implemented ACCU scheme compliance activities; and
- is monitoring and reporting on ACCU scheme compliance.

### Has the Clean Energy Regulator established an appropriate framework for Australian Carbon Credit Unit compliance activities?

The CER's compliance framework for the ACCU scheme includes oversight committees, risk management activities, policies, procedures and guidance material. The CER's compliance policy outlines the compliance activities the CER targets at different types of non-compliance. An ACCU scheme compliance plan, external guidance material, and internal procedures guide how the CER will implement compliance activities. Four risks related to ACCU scheme compliance are monitored through the CER's entity-level risk management framework.

3.3 The CFI Act provides the CER with a range of compliance powers related to the ACCU scheme. These compliance powers are outlined in Appendix 3 and include:

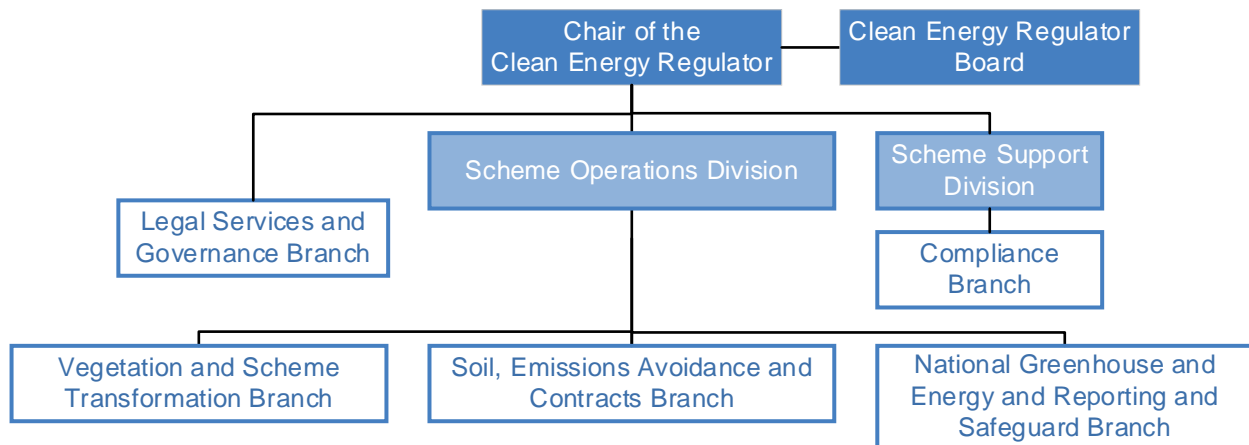
<sup>64</sup> Replacement Explanatory Memorandum, Carbon Credits (Carbon Farming Initiative) Bill 2011, 2010–2011, Parliament of the Commonwealth of Australia, Chapter 10 Monitoring and Enforcement, including paragraph 10.4.

- assessments such as fit and proper tests and the ACCU issuance process;
- reporting requirements and auditing powers;
- administrative actions including the relinquishment of ACCUs or project revocation;
- enforceable undertakings; and
- civil and criminal penalties.

## Business units and executive committees

3.4 Business units in the Scheme Operations Division are responsible for administering the ACCU scheme, including delivering a range of compliance activities. The Legal Services and Governance Branch and the Compliance Branch perform legal and compliance related functions across all schemes administered by the CER, including the ACCU scheme. Figure 3.1 presents an overview of the CER's business units involved in ACCU scheme compliance.

**Figure 3.1: Business units involved with ACCU scheme compliance**

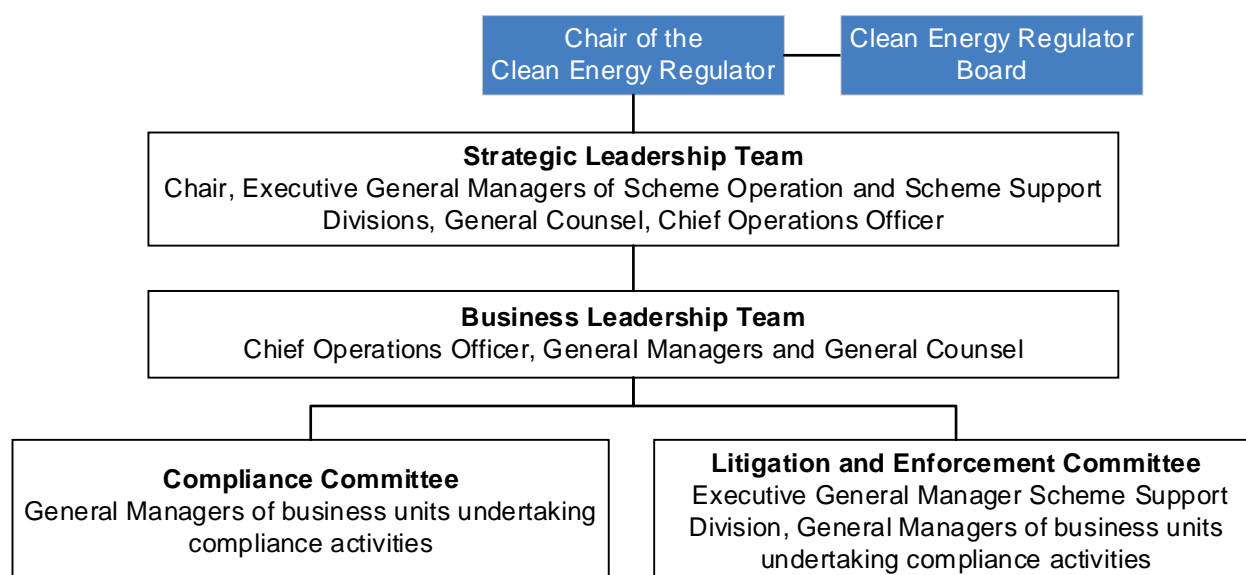


Source: ANAO presentation of CER material.

3.5 The Strategic Leadership Team and Business Leadership Team are senior executive level committees with oversight roles across all the CER's operations, including compliance activities. The Compliance Committee and the Litigation and Enforcement Committee are subcommittees of the Business Leadership Team that are focused on compliance matters. The Compliance Committee was established in April 2016. The Litigation and Enforcement Committee was established in September 2018.<sup>65</sup> An overview of the executive committees related to ACCU scheme compliance is presented in Figure 3.2.

<sup>65</sup> The Litigation and Enforcement Committee's terms of reference state that it was established 'partly in response to recommendation 2 of Auditor-General Report No.18 of 2018–19 [Administration of the Renewable Energy Target]'.



**Figure 3.2: Executive committees involved with ACCU scheme compliance**

Source: ANAO presentation of CER material.

### *Compliance Committee*

3.6 The Compliance Committee's terms of reference states that the committee 'will establish a program of work that reflects the priorities of business areas and program implementation responsibilities.' While Compliance Committee records demonstrate planning for upcoming committee activities, a documented program of work was not developed by the Compliance Committee.

3.7 The terms of reference also outline the Compliance Committee is to provide seven types of strategic advice and support to the CER's program areas. The ANAO reviewed the minutes of all 13 Compliance Committee meetings held between July 2021 and July 2023. The Compliance Committee is meeting its terms of reference in relation to two of these seven activities:

- 'discussing and addressing existing and emerging patterns and trends of non-compliance within and across programs as well as with other Commonwealth legislation'; and
- 'promoting partnering and collaboration with other regulatory agencies for mutual benefit and better compliance outcomes'.

3.8 The Compliance Committee is not fully delivering on five of the seven activities outlined in its terms of reference. While Compliance Committee records demonstrate the committee noted papers across these five activities, the committee itself did not undertake the actions described in the terms of reference. As illustrated in Case study 3, 'noting' papers on these matters was not considered to demonstrate that the committee has delivered the specific actions described in its terms of reference.

### Case study 3. Compliance committee

The Compliance Committee's terms of reference include the activity 'Monitoring and evaluating implementation of agency compliance strategies, policies and procedures and testing for consistency with the agency's risk appetite.'

Meeting minutes demonstrate that the Compliance Committee received regular updates on compliance strategies, policies, and procedures. Compliance Committee records do not demonstrate how the Compliance Committee evaluated implementation, or tested if strategies, policies, and procedures were consistent with the CER's risk appetite.

3.9 The CER provided ANAO with evidence of how these five activities were implemented by the CER's business units, rather than the Compliance Committee. For example:

- business units undertaking quarterly assessments that compliance strategies, policies and procedures are consistent with the agency's risk appetite, and this quarterly assessment presented to the CER board;
- strategic directions for scheme compliance plans being set through the development of the CER's corporate documents including the corporate plan, annual report, compliance and enforcement priorities, divisional and branch business plans; and
- the Legal Services and Governance Branch maintaining a list of proposed legislative amendments and progressing these amendments with the responsible department.

3.10 In December 2023, the CER advised the ANAO that the Compliance Committee's terms of reference are due for review in early 2024. The activities described in the Compliance Committee's terms of reference create an expectation the committee is responsible for delivering these activities, rather than the business units.

### Opportunity for improvement

3.11 The CER revises the Compliance Committee's terms of reference to clearly identify the activities the committee delivers and the matters the committee discusses or notes.

### *Litigation and Enforcement Committee*

3.12 The Litigation and Enforcement Committee's terms of reference states that this committee:

- is focussed on addressing non-compliance and generally deals with individual cases of non-compliance; and
- ensures that compliance cases are conducted 'in a timely, professional manner and according to relevant legal and policy requirements ... and internal KPIs'.

3.13 The Litigation and Enforcement Committee papers for 21 meetings held between July 2020 and May 2023 included:

- reporting against investigative key performance indicators including numbers of investigations opened and closed, age of active investigations and cases on hold;
- status updates of active enforceable undertakings and rectification agreements;
- advice on investigations opened and closed since the last meeting; and
- updates on current cases.

3.14 Between July 2020 and May 2023, the Litigation and Enforcement Committee dealt with one compliance case related to the ACCU scheme. Information on the progress of this case was presented to 14 Litigation and Enforcement Committee meetings, including as a specific agenda item in five of these meetings. More information on this case is presented in paragraph 3.61.

3.15 Almost all of the compliance cases considered by the Litigation and Enforcement Committee between July 2020 and May 2023 related to the Small-scale Renewable Energy Scheme (SRES), rather than the ACCU scheme. In December 2023, the CER advised the ANAO that this is to be expected as the SRES scheme's high transaction volumes and upfront incentives lead to greater numbers of non-compliance cases that fall into the scope of the Litigation and Enforcement Committee.

### **Compliance policies, plans, procedures and guidance**

3.16 Framework documents such as policies, plans, internal procedures, and external guidance help ensure compliance activities achieve the intended outcomes. The CER has both an entity-level compliance policy and an ACCU scheme-specific compliance plan. These documents are supported by internal procedures and external guidance material published on the CER's website.

#### *CER compliance policy*

3.17 The CER has a publicly available *Compliance policy for education, monitoring and enforcement activities* (CER compliance policy).<sup>66</sup> The CER compliance policy 'outlines [the CER's] approach to particular aspects of compliance activities under the schemes [it] administer[s]...'. The CER's compliance policy describes the responsibilities of:

- scheme participants, which includes the responsibility for complying with relevant requirements under the schemes administered by the CER; and
- the CER in relation to scheme compliance, which include:
  - explaining how schemes work and what participants can do to comply with scheme requirements;
  - monitoring compliance;
  - facilitating and enforcing compliance with each scheme;
  - collecting, analysing, providing, and publishing information and data; and
  - accrediting auditors and inspectors for the schemes the CER administers.

3.18 The CER's compliance policy includes a response continuum for non-compliance issues. This response continuum describes the compliance activities the CER targets towards different compliance attitudes and types of non-compliance across the schemes it administers. These participant attitudes and CER's responses are summarised in Table 3.1.

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<sup>66</sup> Clean Energy Regulator, *Compliance policy for education, monitoring and enforcement activities*, version 1, 2019, available from <https://cer.gov.au/about-us/our-compliance-approach/compliance-policy-education-monitoring-and-enforcement-activities> [accessed January 2024].

**Table 3.1: Clean Energy Regulator response continuum to non-compliance**

Participant's attitudes and behaviours	Clean Energy Regulator's response
<b>Voluntary compliance</b> — committed to doing the right thing. <ul style="list-style-type: none"> <li>• Informed self-assessment.</li> <li>• Management is compliance oriented.</li> </ul>	<b>Help and support</b> <ul style="list-style-type: none"> <li>• Make ongoing compliance easy, for example releasing guidelines, hosting discussion forums.</li> <li>• Use proactive outreach to better understand capabilities to comply.</li> </ul>
<b>Accidental non-compliance</b> — trying to do the right thing, but not always succeeding. <ul style="list-style-type: none"> <li>• Not yet compliant.</li> <li>• Attempting compliance, for example developing internal control systems to ensure compliance.</li> <li>• Impact is low.</li> <li>• Non-systemic.</li> </ul>	<b>Inform and advise</b> <ul style="list-style-type: none"> <li>• Provide targeted guidance to participants.</li> <li>• Provide feedback on adequacy of systems to ensure compliance.</li> </ul>
<b>Opportunistic non-compliance</b> — do not want to comply but will if made to. <ul style="list-style-type: none"> <li>• Resistance to compliance.</li> <li>• Lack of indication of intention to comply, for example no indication of systems in place to ensure compliance.</li> <li>• Habitual lapses into non-compliance.</li> </ul>	<b>Correct behaviour</b> <ul style="list-style-type: none"> <li>• Respond to detected non-compliance according to the severity, for example accepting enforceable undertakings, infringement notices, and temporary suspensions.</li> <li>• Publish information on enforcement activities.</li> </ul>
<b>Intentional non-compliance</b> — decision to be non-compliant. <ul style="list-style-type: none"> <li>• Deliberate non-compliance.</li> <li>• Criminal intent or fraud.</li> <li>• Other illegal activity.</li> </ul>	<b>Enforce</b> <ul style="list-style-type: none"> <li>• Revoke, deregister, suspend, initiate investigations, pursue civil action or refer any relevant cases for criminal prosecution.</li> <li>• Publish information on enforcement activities.</li> </ul>

Source: Adapted from CER's *Compliance policy for education, monitoring and enforcement activities*.

3.19 The CER's implementation of the compliance responses described in Table 3.1 for the ACCU scheme are examined in paragraphs 3.33 to 3.71.

3.20 The CER commits to establishing annual compliance priorities set under the compliance policy. The CER's Compliance Policy states the CER will set annual compliance priorities 'to increase the transparency and accountability of [the CER's] activities to scheme participants, stakeholders, and the public'. The CER has set annual compliance priorities related to the ACCU scheme each year since 2017–18. The monitoring and reporting of annual compliance priorities is examined in paragraphs 3.73 to 3.81.

#### *ACCU scheme compliance plan*

3.21 The CER has an ACCU scheme compliance plan for 2021–2023. The ACCU scheme compliance plan presents:

- the CER's risk context for ACCU compliance, including how the plan incorporates the CER's organisational risk management objectives and information on ACCU scheme-specific risks;

- the organisational context for the plan, including linkages to the CER's corporate planning process and governance, planning, and operational frameworks; and
- a compliance operation model describing the roles of eight different business units across the CER involved with ACCU scheme compliance, along with a compliance process map.

3.22 The CER's implementation of the compliance activities described in the ACCU scheme compliance plan is examined in paragraphs 3.33 to 3.71.

### *Coverage of the CFI Act's regulatory powers in the ACCU compliance framework*

3.23 The ACCU scheme compliance plan, public guidance material, and internal procedures document the CER's approach to utilising the compliance powers provided by the CFI Act, including:

- assessments including project registration and ACCU issuance;
- reporting, auditing and monitoring;
- administrative actions, including ACCU relinquishment or project revocation;
- enforceable undertakings; and
- civil and criminal penalties.<sup>67</sup>

### *Adherence of compliance framework to Australian Government Resource Management Guide for Regulatory Performance*

3.24 The Australian Government's Resource Management Guide for Regulatory Performance outlines expectations for Australian Government regulators and describes principles of best practice.<sup>68</sup> The CER's entity-level *Compliance policy for education, monitoring and enforcement* activities, ACCU scheme-specific compliance plan, and compliance-related information published on the CER's website demonstrate the CER's implementation of the best practice advice from this resource management guide including:

- communicating organisational values that articulate the type of regulator and regulatory posture they seek to adopt<sup>69</sup>;
- maintaining and publishing a compliance and enforcement strategy that articulates the CER's approach to risk and how this informs decision-making<sup>70</sup>; and
- provide guidance and information to help regulated entities understand their obligations and responsibilities to encourage voluntary compliance.<sup>71</sup>

67 Appendix 3 details the specific powers of the CFI Act considered by the ANAO in this analysis.

68 Department of Finance, Regulator Performance (Resource Management Guide 128), <https://www.finance.gov.au/government/managing-commonwealth-resources/regulator-performance-rmg-128> [accessed 8 April 2024].

69 Department of Finance, Regulator Performance (Resource Management Guide 128), Principle 1: Continuous improvement and building trust, <https://www.finance.gov.au/government/managing-commonwealth-resources/regulator-performance-rmg-128/principle-1-continuous-improvement-and-building-trust> [accessed 8 April 2024].

70 Department of Finance, Regulator Performance (Resource Management Guide 128), Principle 2: Risk based and data driven, <https://www.finance.gov.au/government/managing-commonwealth-resources/regulator-performance-rmg-128/principle-2-risk-based-and-data-driven> [accessed 8 April 2024].

71 Department of Finance, Regulator Performance (Resource Management Guide 128), Principle 3: Collaboration and engagement, <https://www.finance.gov.au/government/managing-commonwealth-resources/regulator-performance-rmg-128/principle-3-collaboration-and-engagement> [accessed 8 April 2024].

## Risk assessment and controls

3.25 The current version of CER's entity-level risk management framework was approved in 2020. It includes a risk management policy, a risk appetite and tolerance statement, and risk management processes, systems, and reporting.<sup>72</sup>

3.26 For four risks related to ACCU scheme compliance, the CER risk register records information including a description of the risk, the risk owner, target and current risk levels, controls, and treatments.<sup>73</sup> The targeted and assessed risk ratings recorded in the the CER Risk Register for these four risks at August 2023 are presented in Table 3.2.

**Table 3.2: Risk ratings and assessment dates for risks related to ACCU compliance**

Organisational risk	Targeted risk rating <sup>a</sup>	Assessed risk rating <sup>a</sup>
Participants are issued ACCUs they are not eligible to receive	Medium	Medium
Carbon sequestration is reversed and not recovered across the scheme in the crediting period	Medium	Medium
Carbon sequestration is reversed and not recovered across the scheme in the permanence period, including exceeding the 5 per cent risk of reversal buffer	Medium	Medium
Scheme audit reports do not support scheme decision-making	Medium	Medium

Note a: Under the CER's risk management framework, risk rating is determined by assessing the likelihood of the risk event occurring, and the impact to the agency if the risk event does occur.

Source: ANAO summary of CER risk register.

3.27 A quarterly risk update report is presented to CER's governance committees. This report includes information related to assessed and target risk ratings across the entity, including for the four ACCU compliance related risks summarised in Table 3.2.

3.28 The monitoring of targeted and assessed risks rating was demonstrated through quarterly risk reporting. The risk register's data fields recording the date of last assessment were not up to date when the ANAO reviewed the register in August 2023. This was rectified for three of the four risks in February 2024.

72 Earlier versions of this enterprise risk management framework were examined by Auditor-General Report No. 14 of 2016–17 *Abatement Crediting and Purchasing under the Emissions Reduction Fund* and Auditor-General Report No. 18 of 2018–19 *Administration of the Renewable Energy Target*. Auditor-General Report No. 14 of 2016–17 found '[the CER had] a well-established and integrated risk management framework to guide the development and implementation of risk management plans for the [Emissions Reduction Fund]'. The CER's implementation of improvements identified in Auditor-General Report No. 18 of 2018–19 are examined in paragraphs 3.30 to 3.32.

73 In the CER's risk management framework, a control is an existing activity the agency has in place to mitigate a risk. A treatment is a new activity the CER decides to implement to manage a risk.

### Opportunity for improvement

3.29 The CER documents in its risk register that reviews of risk ratings are completed in the timeframes set in its risk management policy.

### Identification and assessment of controls

3.30 Auditor-General Report No.18 of 2018–19 *Administration of the Renewable Energy Target* found:

- the CER's implementation of its risk management framework could be improved, as risks had few or no controls identified; and
- while the CER's risk register had a facility to record the effectiveness of current controls, this information was not recorded in the risk register.<sup>74</sup>

3.31 The ANAO reviewed the information the CER had recorded for controls related to the four ACCU-related risks on the CER's risk register in August 2023. The CER had identified 120 controls across these four ACCU related risks and recorded its assessment of the effectiveness of 108 of these controls in the risk register (Table 3.3).

**Table 3.3: The CER's assessment of the effectiveness of controls related to ACCU scheme risks**

Organisational risk	Controls self-assessed as effective	Controls self-assessed as partly effective	Controls not self-assessed	Total assessments <sup>a</sup>
Participants are issued ACCUs they are not eligible to receive	8	8	1	17
Carbon sequestration is reversed and not recovered across the scheme in the crediting period	2	20	4	26
Carbon sequestration is reversed and not recovered across the scheme in the permanence period, including exceeding the 5 per cent risk of reversal buffer	4	12	7	23
Scheme audit reports do not support scheme decision-making	40	14	0	54
<b>Total assessments<sup>a</sup></b>	<b>54</b>	<b>54</b>	<b>12</b>	<b>120</b>

Note a: This is a total number of assessments, not unique controls. Some controls are relevant to more than one risk, so are assessed multiple times.

Source: ANAO summary of CER risk register.

<sup>74</sup> Auditor-General Report No.18 of 2018–19 *Administration of the Renewable Energy Target*, paragraphs 5.13 to 5.17.



3.32 Controls identified by the CER include project and ACCU applications assessments and compliance and monitoring activities.<sup>75</sup> The identification of controls and the assessment of their effectiveness recorded in the risk register demonstrates the CER has improved its risk management and addressed the shortcomings identified in Auditor-General Report No.18 of 2018–19.

### Is the Clean Energy Regulator implementing Australian Carbon Credit Unit related compliance activities?

The CER uses regulatory powers under the CFI Act to address potential and identified non-compliance. Fit and proper tests and the ACCU issuance process are applied to scheme entry and the issuance of ACCUs. The CER uses the CFI Act's auditing powers to verify the information presented by project proponents. The CER applies enforceable undertakings, ACCU relinquishments and project revocation powers when non-compliance is identified. Information on the outcomes of enforceable undertakings could be more clearly presented on the CER's website.

3.33 The effectiveness of the CER's implementation of the CFI Act's compliance powers has been assessed by reviewing the use of these powers across four areas of ACCU scheme compliance:

- implementation of fit and proper tests;
- administrative actions taken during the ACCU crediting process;
- auditing activities; and
- actions taken in response to identified non-compliance.

#### Fit and proper tests

3.34 The CFI Act's fit and proper test requirements for participating in the ACCU scheme were designed to reduce the risk of fraud, deceptive or unfair conduct, and non-compliance.<sup>76</sup> The CER's ACCU scheme compliance plan identifies that controlling ACCU scheme entry by assessing applicants is one of the strategies 'guiding the design and implementation of compliance activities'.

3.35 The CER's project registration assessment includes a fit and proper test that is applied to the project applicants.<sup>77</sup> The Carbon Credits (Carbon Farming Initiative) Rule 2015 specifies the 'events to which regard must be had for the purposes of the fit and proper person test for individuals and bodies corporate'.<sup>78</sup> These include convictions for offences under Commonwealth, state and territory laws, breaches of certain Acts or regulations under those Acts, and 'any other events that the Regulator considers relevant.'

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75 The ACCU issuance process is examined in paragraphs 2.38 to 2.57. The implementation of compliance related controls are examined in paragraphs 3.33 to 3.71.

76 Replacement Explanatory Memorandum, Carbon Credits (Carbon Farming Initiative) Bill 2011, Parliament of the Commonwealth of Australia, including paragraphs 2.4 to 2.5, 2.15 to 2.20, 3.26, 4.15, and 9.20.

77 Auditor-General Report No.14 of 2016–17 *Abatement Crediting and Purchasing under the Emissions Reduction Fund* found 'applications for fund project registration and variation have been effectively assessed by the regulator, but documentation of some regulatory processes and decisions could be improved.'

78 Carbon Credits (Carbon Farming Initiative) Rule 2015, section 60.



3.36 This fit and proper testing is also incorporated into the CER's assessments during the ACCU issuance process.<sup>79</sup> This supports the CFI Act requirement that the CER cannot issue ACCUs unless the applicant continues to pass the fit and proper test.<sup>80</sup>

3.37 The CER made two fit and proper status findings that prevented participation in the ACCU scheme between July 2018 and June 2023. One adverse finding related to an applicant and the second revoked the fit and proper status of a carbon service provider.

### **Compliance through the ACCU issuance process**

3.38 The CER's enterprise risk register includes a risk that 'participants are issued ACCUs they are not eligible to receive'.<sup>81</sup> The mitigations the CER has identified for this risk focus on:

- ensuring scheme participants lodge information demonstrating the project has been undertaken in accordance with the relevant ACCU method; and
- the CER correctly assessing this information.

3.39 The CER's ACCU scheme compliance plan identifies the assessment of ACCU crediting applications with a risk-based approach as one of the strategies guiding the design and implementation of compliance activities.

3.40 As outlined in paragraphs 2.38 to 2.57, the CER is appropriately implementing the ACCU issuance process. The ACCU issuance process incorporates administrative actions that support ACCU scheme compliance. These administrative actions include requests for information and crediting pauses.

#### *Requests for information*

3.41 The CFI Act provides the CER with the power to request any additional information the CER considers necessary to enable a decision to be made on an application. The ANAO identified the CER's use of these request for information powers in seven of the 26 ACCU crediting assessment reviews undertaken by the ANAO.<sup>82</sup> The seven requests for information were identified from email records retained as part of the supporting material for the crediting assessment.

3.42 In September 2023, the CER advised the ANAO that across 4,420 crediting applications submitted between July 2018 and June 2023:

- 74 applications were withdrawn by the proponent, usually following a request for information process where the CER sought further information from the applicant; and
- 128 applications where, following assessment by the CER that usually involves a request for information, proponents have voluntarily accepted the CER's correction to the number of ACCUs to be issued.

3.43 The CER's information systems do not include a field that enables a direct count of the number of times the request for information powers have been exercised.

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79 The ACCU issuance process is examined in paragraphs 2.38 to 2.57.

80 CFI Act, subsection 15(2).

81 See paragraphs 3.25 to 3.32 for information about the CER's risk management framework. Table 3.3 presents the CER's assessment of the effectiveness of the controls associated with this risk.

82 The ANAO's review of CER crediting assessments are described in paragraphs 2.38 to 2.57.

### *ACCU crediting pauses*

3.44 The CER communicates to stakeholders that the crediting of ACCUs may be paused.<sup>83</sup> In these public communications and advice to the ANAO, the CER states crediting pauses may occur when a project has been over credited or if there are outstanding compliance matters. In October 2023, the CER also advised the ANAO:

- the use of crediting pauses is an uncommon occurrence and would be a ‘small number’;
- the number of times ACCU crediting has been paused cannot be readily quantified as this is not a specific data field in the CER’s information systems; and
- information about crediting pauses is captured in the records of crediting assessments and a review of these records would be required to determine the number of pauses.

### **Auditing in the ACCU scheme**

3.45 Auditing under the CFI Act was designed to verify the information presented by project proponents to the CER and provide buyers with confidence that ACCUs represent genuine abatement.<sup>84</sup> The CFI Act relies on the auditing framework established under the *National Greenhouse and Energy Reporting Act 2007* (the NGER Act). There are two types of audits that are undertaken in the ACCU scheme:

- scheduled and threshold audits that must be submitted by project proponents with ACCU crediting applications<sup>85</sup>; and
- audits commissioned by the CER to provide assurance that projects comply with the CFI Act, including through the CER’s annual audit program.<sup>86</sup>

3.46 The CER maintains information on its website that describes the requirements for audits of the schemes administered by the CER.<sup>87</sup> This information includes templates showing how the CER expects ACCU scheme audit reports to be structured to meet the requirements of the CFI Act, NGER Act, and relevant Auditing and Assurance Standards Board standards.<sup>88</sup>

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83 For example, see Clean Energy Regulator, *Compliance Update 1 July – 30 September 2023* [Internet], 24 October 2023, available from <https://cer.gov.au/about-us/our-compliance-approach/compliance-and-enforcement-priorities/compliance-and-enforcement-1> [accessed 8 April 2024].

84 Replacement Explanatory Memorandum, Carbon Credits (Carbon Farming Initiative) Bill 2011, 2010–2011, Parliament of the Commonwealth of Australia, Chapter 8 Audit, including paragraphs 8.3 and 8.4.

85 The requirement for audits to support credit applications is established through the CFI Act, Part 2 — Issue of Australian carbon credit units in respect of offsets projects.

86 The power to commission these compliance audits is provided through the CFI Act, Part 19—Audits.

87 Clean Energy Regulator, *Audits in our schemes* [Internet], available from <https://cer.gov.au/schemes/audits-our-schemes> [accessed 23 April 2024].

88 Auditing and assurance standards made by the Auditing and Assurance Standards Board establish requirements and responsibilities for auditors and assurance practitioners performing engagements under those standards. The relevant Auditing and Assurance Standards Board standards are: ASAE 3000 *Assurance Engagements other than Audits or Reviews of Historical Financial Information*; ASAE 3100 *Compliance Engagements*; and some components of ASAE 3410 *Assurance on Greenhouse Gas Statements*. See Auditing and Assurance Standards Board, *Standards & Guidance* [Internet], available from <https://auasb.gov.au/standards-guidance/auasb-standards> [accessed 8 April 2024].

### *Scheduled audits*

3.47 The scheduled audits that must be submitted with certain ACCU crediting applications are designed to provide the CER with reasonable assurance the proponent, the project and the offset report met the requirements of both the CFI Act and the relevant ACCU method.

3.48 The CER's information system records the outcomes of 1,129 audits submitted with ACCU crediting applications between August 2015 and November 2023. The outcomes of these audit reports are summarised in Table 3.4 and fall into three categories:

- a 'clean' audit opinion providing reasonable assurance the proponent, project, and offset report met the relevant requirements of both the CFI Act and the ACCU method under which the project is conducted;
- a 'qualified' audit opinion which provides reasonable assurance the relevant requirements of the CFI Act and ACCU method were met, except in relation to specific matters where issues were identified by the auditor; or
- an 'adverse' audit opinion which provides no assurance as the auditor identifies significant matters that prevent the relevant requirements of the CFI Act and ACCU method being met.

**Table 3.4: Assurance opinions submitted with ACCU crediting applications between August 2015 and November 2023**

Clean reasonable assurance opinion	Assurance with qualification	No assurance due to adverse findings	Total
1,057	70	2	1,129

Source: ANAO summary of CER data.

3.49 The CER's assessment of the ACCU crediting applications includes steps to confirm the project is up to date with its audit schedule and there are no outstanding audit matters that would prevent the issuing of ACCUs. As detailed in paragraphs 2.38 to 2.57, the CER is implementing these steps in the ACCU issuance process.

### *CER annual audit programs*

3.50 The CER undertakes an annual audit program across the schemes it administers.<sup>89</sup> This program is managed in the CER's Compliance Branch, separate from the Scheme Operation Division undertaking ACCU scheme administration.<sup>90</sup> Between 2018–19 and 2022–23, 29 audits of ACCU scheme projects were commissioned by the CER as part of its annual audit program. The outcomes of these audit reports are summarised in Table 3.5.

89 These audits are commissioned by the CER under the CFI Act, Part 19—Audits, as opposed the scheduled audits project proponents must submit with the crediting applications under CFI Act, Part 2 — Issue of Australian carbon credit units in respect of offsets projects. For both types of audits, the auditors are subject to the auditor independence requirements of the NGER Act and the relevant auditing and assurance standards as outlined in footnote 88.

90 An overview of the CER's business units undertaking ACCU related compliance activities is presented in paragraph 3.4 and Figure 3.1.

**Table 3.5: Assurance opinions for the ACCU scheme from the CER's annual audit programs from 2018–19 to 2022–23**

Clean reasonable assurance opinion	Assurance with qualification	No assurance due to adverse findings	Total
17	11	1	29

Source: ANAO summary of CER data.

3.51 An evaluation is completed for each annual audit program and presented to the CER's Compliance Committee. This evaluation reviews the implementation of the most recent annual audit program and identifies trends and approaches for the next year's audit program.

#### HIR gateway audits

3.52 On 3 May 2023, the Minister for Climate Change and Energy made a direction under the *Clean Energy Regulator Act 2011* for the CER to prioritise audits of the compliance of human-induced regeneration (HIR) project proponents with their obligations under the CFI Rule.<sup>91</sup> The CER published guidance on its implementation of this direction, including an expansion of the CER's annual audit program to include five-yearly checks for HIR projects. In December 2023, the CER briefed the Minister for Climate Change and Energy on the implementation of this ministerial direction, including that 33 audits of HIR projects had been commissioned by the CER.

#### *Issuance of ACCUs after audit findings*

3.53 The ANAO reviewed if the CER had determined if issues identified in the audits had been addressed before issuing ACCUs. This review assessed the CER's actions related to the three audits that provided no assurance due to adverse findings and five audits that provided assurance with qualification. The CER had taken appropriate action for the eight reviewed projects as:

- four of the projects had not been issued ACCUs after the audit findings had been made; and
- the CER had documented resolution to the issues identified in the audit report before issuing ACCUs to the other four projects.

#### *CER Auditor Inspection Program*

3.54 The CER conducts an annual Auditor Inspection Program designed to:

- ensure that auditors comply with the requirements of both the NGER Audit Determination and the NGER Regulations in carrying out greenhouse and energy audits;
- review the decision-making processes auditors use in carrying out greenhouse and energy audits in order to determine whether their professional judgement is exercised appropriately;
- provide the CER with intelligence to inform its ongoing management of auditor performance; and
- provide confidence in the findings of audit conclusions.

91 Minister for Climate Change and Energy, *Clean Energy Regulator (Human-Induced Regeneration Projects) Direction 2023*, 3 May 2023, available from <https://www.legislation.gov.au/Details/F2023L00530>.

3.55 The outcomes of the annual Auditor Inspection Programs from 2016–17 to 2021–22 are presented in Table 3.6.

**Table 3.6: Outcomes of auditor inspections from 2016–17 to 2021–22**

Meets expectations	Recommendations for improvement	Action plans	Deregistration: Involuntary	Deregistration: Voluntary	Total
11	24	7	3	3	48

Source: ANAO summary of CER records.

3.56 The ANAO reviewed the CER's implementation of the Auditor Inspection Program for the years 2017–18 and 2021–22. The Auditor Inspection Program was completed each year, CER management was aware of the results, and issues identified were addressed by CER.

### **Actions taken in relation to non-compliance**

3.57 The CFI Act includes enforcement provisions to address non-compliance that are designed to ensure the integrity of ACCUs.<sup>92</sup> The CER's ACCU compliance plan identifies two categories of non-compliance and the types of compliance actions to be undertaken by the CER.

- For project proponents considered by the CER to have undertaken 'opportunistic non-compliance', actions identified to 'correct behaviour' include agency-initiated audits, assessments and determinations, and the enforcement of penalties.
- For project proponents considered to have undertaken 'intentional non-compliance', the six enforcement actions identified are investigations, enforceable undertakings, relinquishment of ACCUs, revocations of projects, revocation of fit and proper status, and civil and criminal penalties.

#### *Enforceable undertakings*

3.58 Enforceable undertakings under the CFI Act provide the CER with a mechanism to ensure compliance without undertaking court action. The CER can accept written undertakings from ACCU scheme participants in relation to<sup>93</sup>:

- taking specific action to comply with the CFI Act or associated provisions;
- refraining from taking specific action to comply with the CFI Act or associated provisions; or
- specific actions directed towards ensuring that the participant does not contravene, or is unlikely to contravene, the CFI Act or associated provisions in the future.

3.59 The CER entered into two CFI Act enforceable undertakings between 2018 and 2023.

3.60 In June 2018, the CER entered into an enforceable undertaking with EDL LFG (SA) Pty Ltd undertaking in relation to a range of actions to comply with the CFI Act, including addressing reporting issues and implementing a compliance plan. In May 2020, the CER assessed EDL LFG had satisfied the enforceable undertaking.

<sup>92</sup> Replacement Explanatory Memorandum, Carbon Credits (Carbon Farming Initiative) Bill 2011, 2010–2011, Parliament of the Commonwealth of Australia, Chapter 10 Monitoring and Enforcement.

<sup>93</sup> CFI Act, subsection 237(1).

3.61 In May 2020, the CER entered into an enforceable undertaking with Country Carbon Pty Ltd which required acceptable oversight and business practices to be put in place to ensure that Country Carbon met its obligations under the law and under contracts, and maintained its fit and proper status. The CER found Country Carbon did not comply with the enforceable undertaking, and terminated Country Carbon's fit and proper status in April 2021.

3.62 The CER published details of these enforceable undertaking on CER's website as required under the CFI Act.<sup>94</sup> Both these enforceable undertakings are reported as 'completed' on the CER's website. There is no information presented on the enforceable undertaking section of CER's website that distinguishes between:

- enforceable undertakings completed by the scheme participant addressing the matters covered by the undertaking; or
- enforceable undertakings where the scheme participants failed to meet the requirements of the undertakings and the participant has been subject to further compliance actions, such as revocation of fit and proper status.

#### Opportunity for improvement

3.63 On the enforceable undertakings section of its website, the CER could present information on the CER's basis for determining an enforceable undertaking has been completed. This would allow stakeholders to understand the outcome of the compliance actions.

#### *Relinquishment of ACCUs*

3.64 The CFI Act requires project proponents to relinquish ACCUs in the following circumstances<sup>95</sup>:

- for all projects, when false or misleading information is provided to the CER; or
- for sequestration projects:
  - where a project is voluntarily revoked or changes its permanence period;
  - where the project has been revoked by the CER;
  - where carbon stores have not been restored following a natural disturbance; or
  - where there has been deliberate reversals of the carbon stores.

3.65 Between 2013–14 and December 2023, there have been 19 relinquishment actions across 18 projects for a total of 211,374 ACCUs relinquished.<sup>96</sup> These ACCUs were relinquished in the timeframe required under the CFI Act.<sup>97</sup> A summary of the reasons for the relinquishments is presented in Table 3.7.

94 CFI Act, subsection 237(5). Clean Energy Regulator's publication of enforceable undertakings is available at <https://cer.gov.au/about-us/our-compliance-approach/enforceable-undertakings> [accessed 8 April 2024].

95 CFI Act, Part 7.

96 One project was subject to two separate relinquishment actions: a change to 25-year performance period; and then a relinquishment before voluntary project revocation.

97 This is generally within 90 days of being ordered to by the CER, unless the proponent appeals the relinquishment.

**Table 3.7: Reason for Australian Carbon Credit Units to be relinquished**

Reason	Relinquishment action	ACCUs relinquished
False or misleading information provided to CER	13	186,847
Changed to 25-year permanence period	3	23,388
Relinquishment before a voluntary project revocation	3	1,139
<b>Total</b>	<b>19</b>	<b>211,374</b>

Source: ANAO analysis of CER records.

3.66 The CFI Act sets reporting requirements for the CER in relation to the relinquishment of ACCUs. This reporting is examined in paragraphs 3.82 to 3.84.

### *Revocations of projects*

3.67 The CFI Act allows for the CER to unilaterally revoke an ACCU project in a range of situations including<sup>98</sup>:

- a project does not meet the eligibility requirements set out in the CFI Act;
- a participant ceases to pass the fit and proper test; or
- false or misleading information is provided to the CER.

3.68 A project proponent may also voluntarily request the CER revoke a project if the proponent chooses to no longer participate in the ACCU scheme.

3.69 Up to December 2023, the CER's project register shows 277 of 1,997 ACCU projects had been revoked:

- 11 projects were subject to involuntary revocation by the CER, with nine revoked before ACCUs were issued; and
- 266 projects were voluntarily revoked by proponents, with 240 revoked before ACCUs were issued.

3.70 If projects using a sequestration ACCU method are revoked in either manner, the CER may require any ACCUs issued to that project to be relinquished.<sup>99</sup> ANAO analysis of the project register up to December 2023 identified:

- that 323,858 ACCUs had been issued to revoked projects, with 5,055 of these ACCUs issued to revoked projects using a sequestration ACCU method; and
- all 5,055 ACCUs issued to revoked projects using a sequestration ACCU method had been relinquished.

### *Civil and criminal penalties*

3.71 The CER has not applied any of the civil or criminal penalties available under the CFI Act. In January 2024, the CER advised the ANAO:

<sup>98</sup> CFI Act, Part 3 — Eligible offsets projects, Division 4 — Revocation of declaration of eligible offsets project.

<sup>99</sup> CFI Act, Part 7 — Requirements to relinquish Australian carbon credit units.



In general, there is a high level of compliance with the ACCU scheme. This means that there have not been any circumstances giving rise to compliance responses necessitating the use of criminal penalties and civil penalties.

## Is the Clean Energy Regulator monitoring and reporting on Australian Carbon Credit Unit scheme compliance?

The CER monitors and reports on its performance related to ACCU scheme compliance, including activities and outcomes. Internal monitoring can be improved by reporting on the implementation status of all compliance activities. External reporting would be further improved through the addition of quantitative information on compliance activities and improving the structure of some ACCU scheme compliance related information on the CER's website.

3.72 The CER has established mechanisms for monitoring and reporting on ACCU scheme compliance. These include quarterly compliance reporting, publishing information on its website, monitoring the implementation of the ACCU scheme compliance plan and priorities, and including information about ACCU scheme compliance in CER's corporate plans and annual reports.

### Quarterly compliance monitoring and reporting

3.73 Since July 2019, the CER has published a quarterly compliance update on its website and email notifications are sent to stakeholders who have subscribed to receive email updates from the CER.<sup>100</sup> The CER intends these updates to keep stakeholders informed of activities related to compliance and enforcement priorities and provide information to assist compliance.

3.74 The data and information presented in quarterly compliance updates is reviewed by the CER's Compliance Committee and by other committees at the CER. In November 2023, the CER formalised a procedure for producing the quarterly compliance update. This procedure documented the roles of compliance related business units and committees in the development and the approvals process of the quarterly compliance report.

### Annual compliance priorities for ACCUs

3.75 The CER has set annual compliance priorities across its activities since 2017–18, with the ACCU scheme related compliance priorities being:

- 2023–24: provision of complete and accurate information by scheme participants;
- 2022–23: land regeneration projects;
- 2021–22: fit and proper person tests related to carbon service providers;
- 2020–21: inaccurate or late reporting and land regeneration projects;
- 2019–20: delivery on binding contract obligations and land regeneration projects;
- 2018–19: land regeneration projects; and
- 2017–18: Integrity of client declarations and ability to meet contractual obligations.

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100 Clean Energy Regulator, *Compliance and enforcement priorities* [Internet], 22 March 2024, available from [www.cleanenergyregulator.gov.au/About/Compliance-and-Enforcement/compliance-priorities](http://www.cleanenergyregulator.gov.au/About/Compliance-and-Enforcement/compliance-priorities) [accessed 8 April 2024].



3.76 The CER implemented actions related to these ACCU scheme annual compliance priorities between 2017–18 and 2022–23.

#### *Monitoring of annual compliance priorities*

3.77 In January 2024, the CER advised the ANAO the internal monitoring of the implementation of the annual compliance priorities occurs through the development of the quarterly compliance update. This purpose is identified in the procedure for quarterly compliance updates the CER formalised in November 2023.<sup>101</sup> The governance committee papers on quarterly compliance updates reviewed by the ANAO were developed before this procedure was established, and were not considered to be an effective internal monitoring mechanism as:

- updates were included for some annual compliance priorities however there was not a consistent approach to presenting the current implementation status of all annual compliance priorities;
- information was presented on activities undertaken, however information was not presented on priorities that may not be on track to be delivered; and
- the updates had an external communication focus, rather than an internal monitoring focus.

#### **Opportunity for improvement**

3.78 The CER could use a more structured approach to the internal monitoring for the implementation of all ACCU annual compliance priorities.

#### *Reporting on annual compliance priorities*

3.79 Information about the implementation of the annual compliance priorities is reported on in the management and accountability section of the CER's annual reports. Information describing the amount of compliance activity undertaken was assessed as quantitative information. Other information was assessed as qualitative information. A summary of the assessment is presented in Table 3.8.

**Table 3.8: Annual report information on CER's annual compliance priorities**

Annual report	Quantitative supporting information	Qualitative supporting information
2022–23	▲	◆
2021–22	■	◆
2020–21	■	◆
2019–20	▲	◆
2018–19	◆	◆
2017–18	◆	◆

Key: ◆ Presented for all priorities ▲ Presented for some priorities ■ Presented for no priorities

Source: ANAO analysis of CER annual reports.

<sup>101</sup> See paragraph 3.74.

3.80 Since 2019–20, the CER has included some or no quantitative information about the number of activities undertaken in relation to the ACCU scheme’s compliance priorities. Whilst the CER did not include this quantitative information, it is captured by the CER. Providing both qualitative and quantitative information in annual reports improves the CER’s ability to demonstrate the CER has implemented its annual compliance priorities.







#### Opportunity for improvement




3.81 The CER could present both qualitative and quantitative information in public reporting to better demonstrate implementation of its annual compliance priorities.

### CFI Act reporting requirements

3.82 The CFI Act specifies a range of information on ACCU scheme compliance that the CER is required to publish on its website. These requirements are outlined in Table 3.9. The CER is meeting the requirements to publish this information. There are opportunities to improve the presentation of this information in relation to ACCU relinquishments and enforceable undertakings, as outlined at paragraphs 3.63 and 3.85.

**Table 3.9: Publication of CFI Act information**

CFI Act requirement	ANAO Assessment	
Section 160: Information about issue of ACCUs		The CER publishes a project register on its website. <sup>a</sup> This register contains a range of information including a description of project and details on the numbers of ACCUs issued to projects.
Section 161: Quarterly reports about issue of ACCUs		The CER publishes a quarterly carbon market report.
Section 162: Publication of concise description of the characteristics of ACCUs		The CER publishes a concise description of the characteristics of ACCUs on its website.
Sections 163 and 163A: Annual reports about purchases of eligible ACCUs		The CER publishes auction information on its website on the carbon abatement contract register and auction results webpages.
Sections 164 to 166: Information about ACCU relinquishment		The CER publishes ACCU relinquishment information in the project register. See opportunity for improvement at paragraph 3.85.
Subsection 237(5): The Regulator must publish the undertaking on the Regulator’s website.		The CER publishes current and completed enforceable undertakings on its website. This information would be improved by publishing the reason the enforceable undertaken was completed. See opportunity for improvement at paragraph 3.63.

Key:  Requirements met  Requirements met, opportunity to improve presentation of the information  Requirements not met.

Note a: The project register is available at <https://www.cleanenergyregulator.gov.au/ERF/project-and-contracts-registers/project-register> [accessed 8 April 2024].

Source: ANAO analysis.

### *Public presentation of information on ACCU relinquishments*

3.83 The CFI Act requires the CER to publish information about the ACCU relinquishments, including the details of why the relinquishment was required, and if any appeals were made or penalties were applied. Publicly available information related to ACCU relinquishments, appeals, and penalties is presented in a free text field labelled 'Notes' in the ACCU project register on the CER's website.

3.84 While the CFI Act does not specify the format the information is to be presented in, information made available as unstructured text limits the ability of stakeholders to undertake analysis on the published data.

#### **Opportunity for improvement**

3.85 The CER presents publicly available information on matters such as project revocations, ACCU relinquishments, and CFI Act-related appeals and penalties in a manner that supports data analysis by external stakeholders.

### **Regulator performance framework reporting**

3.86 Under the Australian Government's Regulator Performance Framework, in force from 1 July 2015 to 30 June 2021, regulators were required to self-assess and report their performance each year against six Key Performance Indicators (KPIs) and related performance measures. The CER met this reporting requirement and self-assessed the six KPIs as met each year.

3.87 The Regulator Performance Framework was replaced by the Australian Government Regulator Performance Guide from 1 July 2021. Instead of the six KPIs, the Regulator Performance Guide contained three principles of regulator best practice: 'continuous improvement and building trust'; 'risk based and data driven'; and 'collaboration and engagement'. The Regulator Performance Guide outlined that 'regulator performance reporting should be incorporated into an entity's reporting processes (with a focus on the corporate plan and annual report – including annual performance statement), as required under the PGPA Act and PGPA Rule'. The CER transitioned its self-reporting on regulator performance to its annual reports from 2019–20.

### **ACCU scheme compliance performance information as an input into compliance planning**

3.88 The CER has incorporated its monitoring of ACCU scheme compliance activities into the planning of future ACCU compliance activities. Through the business units and compliance related committees described in paragraphs 3.4 to 3.15, the CER has:

- monitored the implementation of the ACCU scheme compliance plan, including reviewing the plan in early 2023 and deciding to extend this plan into 2024, as the activities set out in the plan 'remained ongoing priorities' for the business units administering the ACCU scheme<sup>102</sup>; and
- developed annual compliance priorities each year.<sup>103</sup>

102 The ACCU scheme compliance plan is examined in paragraphs 3.21 and 3.22.

103 The CER's annual compliance priorities are examined in paragraphs 3.75 to 3.81.

3.89 Committee papers related to the development of annual compliance priorities for the ACCU scheme have incorporated different content across the annual development processes. For example:

- the papers covering the development 2018–19 compliance priorities incorporated the lessons learnt and outcomes from the 2017–18 compliance priorities; and
- the papers covering the development of the 2022–23 priorities focused on matters identified through strategic and operational environmental scanning as reasons for proposed 2022–23 priorities and did not include a review of the CER’s performance against the 2021–22 priorities.

Opportunity for improvement
3.90 To better demonstrate the robustness of compliance planning for the ACCU scheme, the CER could document both the consideration of performance against previous annual compliance priorities and the incorporation of strategic and operational environmental scanning as inputs into decision-making for annual compliance priorities.

## 4. Contract management

### Areas examined

This chapter examines whether the Clean Energy Regulator (CER) effectively managed contracts for the Australian Government's purchases of Australian Carbon Credit Units (ACCUs).

### Conclusion

The CER's administration of carbon abatement contracts in the ACCU scheme was largely effective. The CER has established an appropriate contract management framework that is consistent with the practices outlined in the Australian Government Contract Management Guide. The CER is implementing actions to improve compliance with entity-wide conflict-of-interest arrangements. The contract management framework has been adjusted to reflect changes in the ACCU scheme, including the introduction of optional delivery contracts and the establishment of a fixed delivery exit arrangements process. Key contract management controls have been implemented each year between 2018 and 2023.

### Areas for improvement

There is an opportunity to improve the implementation of conflict-of-interest declaration requirements and ACCU scheme auction probity plans.

4.1 The *Carbon Credits (Carbon Farming Initiative) Act 2011* (CFI Act) allows the CER to purchase ACCUs through carbon abatement contracts. As at December 2023 the CER has entered into 612 carbon abatement contracts and purchased 81.7 million ACCUs. Effective contract management includes:

- establishing an appropriate contract management framework; and
- undertaking contract management activities in accordance with the framework.

### Has the Clean Energy Regulator established an appropriate contract management framework?

The CER has established an ACCU scheme contract management framework for selecting, contracting and purchasing ACCUs. The ACCU contract management framework is consistent with the Australian Government guidance including for managing contract performance, delivery and variations. The CER has implemented actions to improve compliance with its entity-wide conflict-of-interest declaration processes. Probity advisors did not identify any material issues in the 15 ACCU scheme auctions. The CER did not maintain complete records of staff compliance with auction probity plans.

4.2 Auditor-General Report No.14 of 2016–17 *Abatement Crediting and Purchasing under the Emissions Reduction Fund* (the 2016–17 report) found that the CER had established sound arrangements for selecting carbon abatement for the Australian Government to purchase.<sup>104</sup> The 2016–17 report did not examine the contract management arrangements used by the CER to purchase the ACCUs that deliver this carbon abatement.

<sup>104</sup> Auditor-General Report No.14 of 2016–17 *Abatement Crediting and Purchasing under the Emissions Reduction Fund*, including Chapters 4 and 5.

4.3 The process for selecting, contracting, and purchasing ACCUs involves:

- the CER selecting registered projects that are interested in selling their ACCUs to the Australian Government through a reverse auction process<sup>105</sup>;
- the CER offering contracts to proponents of registered ACCU projects that bid below the benchmark price for that auction;
- establishing a schedule according to which ACCUs are contracted to be delivered; and
- the CER purchasing ACCUs on behalf of the Australian Government from contract holders when scheduled deliveries are made.<sup>106</sup>

### Types of carbon abatement contracts

4.4 The CER offered fixed delivery contracts at each auction between April 2015 and July 2019. Holders of fixed delivery contracts are required to sell the contracted volume of ACCUs to the Australian Government according to a contracted delivery schedule.

4.5 Optional delivery contracts were first offered in March 2020. Optional delivery contracts provide the contract holder the right, but not the obligation, to sell a set quantity of ACCUs to the Australian Government at a set price. Table 4.1 compares the characteristics of fixed and optional delivery contracts.

**Table 4.1: Characteristics of fixed and optional delivery contracts**

Characteristics	Fixed delivery	Optional delivery
Obligation to deliver contracted ACCUs	Yes	No
Delivery of ACCUs from any source <sup>a</sup>	Yes	No
Reduced outstanding quantity if delivery is not made	No	Yes
Multi-year contracts	Yes	Yes
Fixed price	Yes	Yes
Eligible for exit arrangement <sup>b</sup>	Yes	No

Note a: Fixed delivery contracts can deliver ACCUs purchased on the secondary market to make up delivery shortfalls.

Note b: The fixed delivery exit arrangement is discussed further at paragraphs 4.30 to 4.33.

Source: ANAO analysis of CER data.

### *Process for introducing optional delivery contracts*

4.6 In December 2019, the CER opened public consultation on the design of an optional delivery contract. The consultation informed the design of the new contract. The optional delivery contract was designed to encourage investment in new ACCU scheme projects and encourage greater scheme participation following low abatement volumes contracted at the previous auction. The

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105 A reverse auction involves sellers bidding the lowest price at which they are willing to sell their ACCUs to the Australian Government. Each participant puts forward a single, confidential bid during the auction window. This type of tendering process is used to encourage competition among bidders.

106 The CER's ACCU scheme contract management function is a distinct function from the issuance and compliance functions. The CER's contract management process assumes ACCUs have been correctly issued through the processes examined in Chapter 2 and Chapter 3 of this report.

decision to pilot optional delivery contracts was made by the CER Chair and announced by the CER on 5 February 2020.<sup>107</sup>

4.7 Following the pilot of optional delivery contracts at Auction 10 in March 2020, the CER opened an additional round of public consultation seeking stakeholder views on changes to the design of the contract. Following the consultation process, changes were made to the auction guidelines to allow for optional delivery contracts.

### **Contract management framework for Australian Carbon Credit Units**

4.8 The CER has established a framework to manage contracts for purchasing ACCUs. The contract management framework includes:

- the contract management plan;
- contract management process maps; and
- Standard Operating Procedures (SOPs) and work instructions relating to specific processes.

4.9 The CER manages contracts for purchasing ACCUs through information systems that operate on a customer relationship management (CRM) software platform.<sup>108</sup>

### *Assessment against the Australian Government Contract Management Guide*

4.10 The Australian Government Contract Management Guide provides guidance to government entities on contract management. The guide includes a framework to assess the complexity of contracts and recommends activities to manage contracts of each level of complexity.

4.11 The ANAO assessed the features of the CER's contracts for purchasing ACCUs as fitting the category of routine contracts under the Australian Government Contract Management Guide. The arrangements developed by the CER to manage carbon abatement contracts are consistent with the Australian Government Contract Management Guide's requirements for the management of routine contracts (Table 4.2).

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107 The CER provided the ANAO with evidence of this decision-making process. In December 2023, the CER advised ANAO the final decision was documented in a signed paper version of a decision brief; this signed brief was not retained.

108 This is part of the information systems supporting the administration of the ACCU scheme that are examined in paragraphs 2.52 to 2.56.

**Table 4.2: Assessment of contract management framework against the Australian Government Contract Management Guide**

Recommended activity	ANAO Assessment	
Assess risk	◆	The CER has assessed risks associated with managing its portfolio of contracts, see paragraphs 4.12 to 4.14.
Behaving ethically	▲	The CER has entity-wide conflict of interest and ACCU scheme specific probity arrangements. These arrangements were not fully implemented, see paragraphs 4.15 to 4.23.
Measuring and managing performance	◆	The CER monitors ACCU delivery against contracted milestones and tracks cumulative deliveries against scheduled volumes. This occurs through the CFI Act reporting described in paragraphs 3.82 and Table 3.9.
Managing delivery and acceptance	◆	The CER has developed and implemented a process to manage deliveries of contracted ACCUs, see paragraphs 4.8 to 4.9 and 4.30 to 4.33.
Performing contract administration tasks	◆	A framework for contract administration has been established as described in paragraphs 4.8 to 4.9 and implemented as described in paragraphs 4.26 to 4.33.
Managing contract risk	◆	The CER has arrangements to manage risks associated with contracts for the purchase of ACCUs, see paragraphs 4.12 to 4.14.
Managing complaints, disagreements, and disputes	◆	The CER has a process map for the management of contract disputes.
Managing contract variations	◆	The CER has a process for managing contract variations and supplied evidence of variations negotiated.
Complete contract closure activities	◆	The CER has established a procedure for contract completion where delivery obligations have been met.

Key: ◆ Consistent with requirement ▲ Partly consistent with requirement ■ Inconsistent with requirement.

Source: ANAO analysis of information provided by the CER.

## Risk management related to ACCU contracts

4.12 The CER considers risks associated with ACCU contract management as part of its entity-wide risk management framework, under an organisational risk titled 'ACCU Scheme administration does not support abatement in an evolving carbon market'. Through the enterprise risk management framework discussed at paragraphs 3.25 to 3.32, the CER has assessed this risk as being at the targeted rating of 'medium'.

4.13 In addition to the activities under the entity-wide risk management framework, a risk assessment was completed during the development of the fixed delivery exit arrangement in March 2022. The risk assessment identified seven risks and assessed the overall risk level for the development of the fixed delivery exit arrangements as 'medium'. The fixed delivery exit arrangement is discussed further at paragraphs 4.30 to 4.33.

4.14 At the individual ACCU contract level, the CER manages risk in two ways.



- Risks associated with individual sellers are managed through the auction qualification process.<sup>109</sup> To qualify to participate in an auction, sellers must be assessed as a fit and proper person and provide evidence that the abatement amount offered will be generated by the project. A contract to sell ACCUs to the Australian Government can only be entered into by sellers who have been successful at auction.
- There is a step in the ACCU issuance process that identifies if the project has an associated contract and directs the assessor to notify the contract management team if a delivery risk is identified.<sup>110</sup>

## Entity-wide conflict-of-interest arrangements

4.15 The CER's entity-wide conflict-of-interest policy requires all staff to make an annual conflict-of-interest declaration. The CER also requires new starters to attend general security induction training which includes guidance on conflicts of interest. At January 2024, the CER's data shows 357 out of 361 new starters since November 2022 completed this training.

4.16 In September 2022, an internal audit on conflict of interest and probity was completed which identified weaknesses in its governance arrangements in relation to the requirement to make a conflict-of-interest declaration.

4.17 In response to a recommendation of the internal audit, in August 2023 the CER undertook a review of compliance with the entity-wide conflict-of-interest declaration requirements. This review found compliance with the conflict-of-interest declaration requirements was 69 per cent.<sup>111</sup>

4.18 The review made six recommendations to improve compliance with this requirement, four of which were accepted. Two recommendations to link annual conflict-of-interest declaration and mandatory learning requirements to existing annual processes completed by CER staff were not accepted on the basis that alternative actions would be undertaken to address the issues. At December 2023, the CER considered three recommendations of the review to be implemented and closed.

4.19 The CER developed a new Conflict of Interest Policy and Procedure which were approved by the Strategic Leadership Team on 18 September 2023.

## Probity plans for the auction process

4.20 A probity plan was developed for each auction. The probity plans outlined protocols and procedures for CER personnel involved with the auctions, including that CER personnel participating in each auction were to:

- sign off on their understanding and agreement with the probity plan;
- attend a probity briefing; and

109 This step is part of the CER's contract establishment process that is examined in paragraphs 4.26 to 4.27.

110 In 2020, changes to the human-induced regeneration method reduced the expected ACCU volumes for some projects. The CER developed an approach to negotiate variations with single landholders who were at risk of delivery failure.

111 The 69 per cent compliance rate is based on the CER's exclusion of the cohort considered to have an acceptable reason for not completing a conflict-of-interest declaration. If this cohort is included, the rate of compliance is 54 per cent.

- make a conflict-of-interest declaration.

4.21 The spreadsheets used by the CER to track compliance with these requirements were incomplete and did not demonstrate that all personnel involved with the auction processes met these requirements.

4.22 External probity advisors were engaged by the CER for each auction process.<sup>112</sup> The role of the probity advisors is outlined at Table 4.3. Across the 15 auctions, the probity advisors provided advice to the CER on 67 matters. For each of the 15 auction processes, the probity advisors found that the auction was administered in line with the probity plan and no material probity issues were identified.

**Table 4.3: Role of probity advisors in the auction process**

Activities undertaken by the probity advisor	Number of auctions
Reviewing and providing probity related advice on the design of auction documentation and procedures	15 of 15
Sample testing to determine compliance with auction procedures	15 of 15
Acting as an independent observer of key steps in the auction process	15 of 15
Providing a probity briefing to staff involved in the auction	13 of 15

Source: ANAO analysis of probity reports.

Opportunity for improvement
4.23 There is an opportunity for CER to improve overall compliance with conflict-of-interest policies and ACCU scheme probity plans by ensuring the declaration processes are followed and records are maintained to demonstrate implementation.

## Are contracts administered in accordance with the framework?

The CER is undertaking its carbon abatement contract administration activities in accordance with its contract management framework. The CER is also implementing its procedure to manage applications for fixed delivery exit arrangements.
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## Amount of ACCUs committed under Australian Government contracts

4.24 Over fifteen ACCU scheme auctions, 244.5 million ACCUs have been contracted to the Australian Government.<sup>113</sup> The number of contracts awarded and the volume of abatement contracted by the Australian Government at each auction has declined over time. The initial four auctions held in 2015 and 2016 were the source of:

- 58 per cent of all carbon abatement contracts;
- 72 per cent of ACCUs committed to the Australian Government through carbon abatement contracts; and

<sup>112</sup> The probity advisors were Deloitte for auctions one to six, Protiviti for auctions seven to twelve, and Maddocks for auctions thirteen to fifteen.

<sup>113</sup> Appendix 4 presents further information on auction outcomes, contract status and abatement purchased.

- 91 per cent of all ACCUs purchased by the Australian Government.<sup>114</sup>

4.25 In its August 2023 consultation paper on the implementation of Chubb Review recommendations, the Australian Government<sup>115</sup>:

- acknowledged that the private purchase of ACCUs is growing and is expected to accelerate due to the Safeguard Mechanism reforms<sup>116</sup>;
- outlined expectations that fixed contract holders may seek to exit a greater percentage of ACCUs due to Safeguard Mechanism reforms increasing demand;
- stated the Australian Government is reconsidering its objectives and role in the ACCU market; and
- sought stakeholder feedback on the potential changes to Australian Government purchasing of ACCUs.

## Testing of contract management processes

### *Contract establishment*

4.26 The ANAO reviewed the CER's contract establishment process each year between 2018 and 2023. These reviews identified the following steps in the CER's process as being controls supporting the effective establishment of ACCU contracts:

- all bids for auctions were within the benchmark clearing price specified in the post auction brief;
- an assessment was completed on eligibility and credibility of the project and that there was delegate approval for project registration;
- a signed declaration of Emissions Reduction Fund project was issued to the project proponent;
- an assessment had been completed on auction qualification which resulted in a CER delegate approving auction qualification;
- the project proponent had signed the standard terms and conditions of contract as part of the auction registration; and
- the project proponent had been notified of successful bid via email, and that the contract reflected the value as approved by the CER's delegate in a post auction decision brief.

4.27 The CER had completed the above steps for all 31 contracts reviewed by the ANAO across this period.<sup>117</sup>

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114 Appendix 4 provides an overview of actions outcomes and ACCUs purchased by the Australian Government.

115 Department of Climate Change, Energy, the Environment and Water, *ACCU Review Discussion Paper*, 25 August 2023, section 1.3 Australian Government purchasing of ACCUs, available from <https://consult.dcceew.gov.au/publishing-accu-scheme-information> [accessed 9 April 2024]. More information on the Chubb Review is presented in paragraph 1.27 of this report.

116 More information on the Safeguard Mechanism is presented in paragraph 1.15 of this report.

117 These assessments were conducted through eight rounds of testing. Each round of testing involved reviewing samples randomly selected from the population of new contracts established since the previous round of ANAO testing.

## *Purchasing contracted ACCUs*

4.28 The ANAO reviewed the CER's management of the process for purchasing contracted ACCUs on behalf of the Australian Government each year between 2018 and 2023. These reviews identified the following key steps in the CER's processes for the purchasing of contracted ACCUs:

- a transfer of ACCUs from the seller's Australian National Registry of Emissions Units (ANREU) account to the Commonwealth ANREU account had occurred;
- an invoice had been issued;
- the invoice matches to the ANREU transferred quantity of ACCUs and the value per ACCU agrees with the contract dollar value;
- the invoice is mathematically correct; and
- that the payment was approved by the CER's delegate.

4.29 The CER had completed these steps for each of the 224 transactions reviewed by the ANAO.<sup>118</sup>

## **Fixed delivery exit arrangement**

4.30 On 4 March 2022, following a decision of the Australian Government, the CER commenced a pilot of an exit arrangement for fixed delivery contracts.<sup>119</sup> The exit arrangement uses existing contract provisions to allow contract holders with a delivery milestone falling within the open window to be released from their delivery obligations by paying an exit fee to the CER. The arrangement allows ACCUs which were previously contracted to the CER to be sold to organisations that are not the Australian Government.<sup>120</sup>

4.31 The exit arrangement has been opened in three windows. As at January 2024, a fourth pilot window has not yet been announced. Table 4.4 outlines the uptake of the exit arrangement.

**Table 4.4: Uptake of fixed delivery exit arrangement**

Exit window	ACCU volume eligible (millions)	ACCU volume exited (millions)	Percentage of ACCUs exited from Australian Government purchase
4 March 2022 – 30 June 2022	5.8	2.6	45%
1 July 2022 – 31 December 2022	3.2	1.7	53%
1 January 2023 – 30 June 2023	9.1	4.1	45%
<b>Total</b>	<b>18.1</b>	<b>8.4</b>	<b>46%</b>

Source: ANAO summary of CER data.

4.32 Following the 4 March 2022 announcement, the CER developed an application process for the exit arrangement. While the application process was under development contract holders were

118 These assessments were conducted through 10 rounds of testing. Each round of testing involved samples randomly selected from the population of ACCU delivery transactions processed since the previous round of ANAO testing.

119 Fixed and optional delivery carbon abatement contracts are described in paragraphs 4.4 to 4.5, and Table 4.1.

120 Project proponents can sell ACCUs to organisations seeking to voluntarily offset their emissions or comply with emissions reduction obligations under the Safeguard Mechanism.

able to extend delivery milestones under a transitional arrangement. The CER began processing applications through its CRM information system in early June 2022.

4.33 Fifteen applications for the fixed delivery exit arrangement were tested for compliance with the procedure developed by the CER. The CER followed this procedure for all 15 applications tested.

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A handwritten signature in black ink, appearing to read 'Rona Mellor', is centered on a light gray rectangular background.

Rona Mellor PSM  
Acting Auditor-General

Canberra ACT  
30 April 2024



## **Appendices**

## Appendix 1 Entity responses



**Australian Government**  
**Clean Energy Regulator**



27 March 2024

Ms Rona Mellor PSM  
Acting Auditor-General  
Australian National Audit Office  
GPO Box 707  
Canberra ACT 2601

Dear Ms Mellor

### **ANAO Performance Audit: Issuing, compliance and contracting of Australian Carbon Credit Units (ACCUs)**

Thank you for the opportunity to respond to the Australian National Audit Office's (ANAO) proposed audit report on *Issuing, compliance and contracting of Australian Carbon Credit Units*.

I welcome the ANAO's report and note the finding that the Clean Energy Regulator's (CER) administration of the ACCU Scheme is effective or largely effective, with no recommendations within the CER's remit being raised.

Since its original inception in 2011, the ACCU Scheme has steadily evolved and now supports a vibrant market sourcing carbon abatement across the economy to meet both government and private sector demand. Throughout this time, the CER's administration has also evolved, using innovation to develop increasingly sophisticated technology, systems, processes and governance frameworks, to ensure ACCU integrity and foster growth in the carbon market. It is pleasing that our ongoing efforts to support administration are reflected in the outcomes of the ANAO's audit.

I would like to acknowledge the professionalism of the ANAO team to thoroughly sample and review the CER's processes and decision-making in its administration of the ACCU Scheme and carbon abatement contract portfolio. Our ongoing administration will incorporate the areas of improvement identified by the ANAO to build further confidence in the ACCU Scheme and reflect best practice regulation. This report, coupled with recommendations from the recent independent Review of ACCUs and the Climate Change Authority's Review of the ACCU Scheme, will support the approach of continuous improvement taken by the CER as stewards of the Australian carbon market.

Yours sincerely

Mr David Parker AM  
Chair  
Clean Energy Regulator







**Australian Government**  
**Department of Climate Change, Energy,  
 the Environment and Water**

**David Fredericks PSM**  
**Secretary**

Our Ref: EC24-000687

Ms Rona Mellor PSM  
 Acting Auditor-General  
 Australian National Audit Office  
 Office of the Auditor-General  
[officeoftheauditorgeneralperformanceaudit@anao.gov.au](mailto:officeoftheauditorgeneralperformanceaudit@anao.gov.au)

Dear Ms Mellor

*Rona*

Thank you for your correspondence of 12 March 2024, seeking comment on the audit report for the performance audit of the *Issuing, compliance and contracting of Australian Carbon Credit Units*.

Pursuant to section 19 of the *Auditor-General Act 1997*, the Department of Climate Change, Energy, the Environment and Water (the department) has prepared a response to the report (**Appendix A**).

The department is grateful for the way the audit was conducted and pleased the audit team were able to understand the context in which the Australian Carbon Credit Unit Scheme was delivered in formulating their recommendations.

The department agrees with the recommendation relevant to the department's responsibilities and is already making changes to its systems and processes in response. The department takes its governance responsibilities, including management of conflicts of interest, very seriously and considers implementation of this recommendation will improve the department's processes and provide important direction in better managing future programs.

Please find enclosed with this letter the department's Summary Response: Response to the Proposed Recommendations (**Appendix A**).

Yours sincerely

David Fredericks  
 4 April 2024

Encl. Department Response to s19 Audit Report

**DCCEEW.gov.au**  
 John Gorton Building, King Edward Terrace, Parkes ACT 2600 Australia  
 GPO Box 3090 Canberra ACT 2601 ABN: 63 573 932 849

## Appendix 2 Improvements observed by the ANAO

1. The existence of independent external audit, and the accompanying potential for scrutiny improves performance. Improvements in administrative and management practices usually occur: in anticipation of ANAO audit activity; during an audit engagement; as interim findings are made; and/or after the audit has been completed and formal findings are communicated.
2. The Joint Committee of Public Accounts and Audit (JCPAA) has encouraged the ANAO to consider ways in which the ANAO could capture and describe some of these impacts. The ANAO's Corporate Plan states that the ANAO's annual performance statements will provide a narrative that will consider, amongst other matters, analysis of key improvements made by entities during a performance audit process based on information included in tabled performance audit reports.
3. Performance audits involve close engagement between the ANAO and the audited entity as well as other stakeholders involved in the program or activity being audited. Throughout the audit engagement, the ANAO outlines to the entity the preliminary audit findings, conclusions and potential audit recommendations. This ensures that final recommendations are appropriately targeted and encourages entities to take early remedial action on any identified matters during the course of an audit. Remedial actions entities may take during the audit include:
  - strengthening governance arrangements;
  - introducing or revising policies, strategies, guidelines or administrative processes; and
  - initiating reviews or investigations.
4. In this context, the below actions were observed by the ANAO during the course of the audit. It is not clear whether these actions and/or the timing of these actions were planned in response to proposed or actual audit activity. The ANAO has not sought to obtain assurance over the source of these actions or whether they have been appropriately implemented.
  - Undertaking a project to transition the crediting assessment tool from a spreadsheet template to integrated workflows in the CER's information systems (paragraph 2.57).
  - Reviewing process for developing quarterly compliance reporting (paragraph 3.74).
  - Implementing actions arising from an internal audit of conflict-of-interest arrangements (paragraphs 4.15 to 4.19).

### Appendix 3 Compliance-related regulatory powers under the *Carbon Credits (Carbon Farming Initiative) Act 2011* for the Australian Carbon Credit Units scheme

1. A summary of regulatory powers under the CFI Act is presented in Table A.1.

**Table A.1: Compliance-related regulatory powers in the CFI Act**

Category	Reference	Title
Assessment	Part 4, sections 59 and 60	Fit and proper person test
Administrative action	Part 3, Division 3	Variation of declaration of eligible offsets project
Administrative action	Part 3, Division 4	Revocation of declaration of eligible offsets project
Reporting and auditing	Part 6	Reporting and notification requirements
Administrative action	Part 7	Requirements to relinquish Australian carbon credit units
Administrative action	Part 8	Carbon maintenance obligation
Civil and criminal penalties	Part 13	Fraudulent conduct
Administrative action	Part 15	Relinquishment of Australian carbon credit units
Assessment	Part 16	Information gathering powers
Assessment	Part 17	Record keeping and project monitoring requirements
Assessment	Part 18	Monitoring powers
Reporting and auditing	Part 19	Audits
Civil and criminal penalties	Part 20	Liability of executive officers of bodies corporate
Civil and criminal penalties	Part 21	Civil penalty orders
Civil and criminal penalties	Part 22	Offences relating to administrative penalties
Enforceable undertakings	Part 23	Enforceable undertakings
Other	Part 24	Review of decisions

Source: *Carbon Credits (Carbon Farming Initiative) Act 2011* — Compilation No. 19, 12 April 2023.

## Appendix 4 Auction outcomes, contract status, and abatement purchased under the Australian Carbon Credit Units scheme

1. Information about ACCU scheme auction outcomes, contract status and abatement purchased by the Australian Government is presented in Table A.2.

**Table A.2: ACCU scheme auction information**

Auction number and date	Contracts awarded	Contracts completed, lapsed or terminated	Original contracted amount of ACCUs	ACCUs purchased by Australian Government	Cumulative percentage of Aus. Gov. purchases
1: April 2015	107	47	47,333,140	40,063,164	49.02%
2: November 2015	129	32	45,451,010	20,897,385	74.59%
3: April 2016	73	20	50,471,310	10,724,08	87.71%
4: November 2016	47	18	34,356,058	2,984,248	91.37%
5: April 2017	31	20	11,253,091	2,431,278	94.34%
6: December 2017	26	7	7,950,735	1,453,605	96.12%
7: June 2018	32	9	6,668,439	1,391,933	97.82%
8: December 2018	34	16	3,267,279	1,081,732	99.15%
9: July 2019	3	2	59,273	32,502	99.19%
10: March 2020	12	2	1,710,151	147,462	99.37%
11: September 2020	35	4	7,005,894	472,438	99.94%
12: April 2021	10	0	6,772,286	21,000	99.97%
13: October 2021	24	0	6,840,577	24,226	100.00%
14: April 2022	25	0	7,593,036	–	–
15: March 2023	24	0	7,862,384	–	–
<b>Total</b>	<b>612</b>	<b>173</b>	<b>244,594,663</b>	<b>81,725,057</b>	<b>100%</b>

Source: ANAO analysis of the CER's Carbon Abatement Contract Table, 2 January 2024 version.