

Questions about the integrity of Australian Carbon Credit Units



Hannah Barbour
Special Counsel

Earlier this year, the Federal Government appointed an independent panel to review the integrity of Australian Carbon Credit Units (ACCUs) generated under the Emissions Reduction Fund (ERF).

The panel has, among other things, sought independent analysis and advice on the integrity of the human induced regeneration (HIR), avoided deforestation, landfill gas, and carbon capture and storage methods used to generate ACCUs.

The HIR method allows landholders to earn ACCUs for regenerating native forests by changing land management practices including managing the timing and extent of grazing. It is one of the most popular ERF methods and accounts for over 32% of all registered ERF projects and almost 28% of all issued ACCUs.

There are currently over 120 HIR projects registered in Queensland covering an area of over 2 million hectares and over 135 projects registered in New South Wales covering an area of over 1.3 million hectares.

In this past year, several well-known identities in the carbon market (including the former head of the Emissions Reduction Assurance Committee) have made disparaging remarks about the ERF market, saying that a significant number of ACCUs issued by the Clean Energy Regulator are a “sham” and fall short of integrity standards. Much criticism has been levelled at the HIR method and its administration including concerns around the accuracy of baseline data used to determine the effect of changed practices on carbon abatement.

Given the popularity of the HIR method, the Federal Government needs to act quickly to address the growing concerns and doubts about the integrity of this method and the ERF more broadly. The panel will provide its advice to the Federal Government by end of December 2022.

What the Federal Government does with this advice is obviously yet to be seen but it could range from measures as severe as revocation of the method in its entirety to further changes to the guidelines used to assess abatement for HIR projects. Current guidance from the Clean Energy Regulator indicates that where a project methodology is revoked, projects registered under the method may continue but no new projects may be registered. Changes to guidelines could result in a reduction in the number of ACCUs able to be generated by HIR projects.

Thynne + Macartney will continue to monitor the progress of the independent review and will keep our clients updated.

To our valued clients

Often the end of something reminds us how long that issue, or event, spanned in our lives.

For many, 2022 will be a year remembered for resolution.

Resolution of a drought which plagued some districts for over a decade, resolution of COVID-19, resolution of generational ownership of some rural properties, resolution of plans to pay down bank debt or simply resolution of a year of exceptional commodity prices, trading conditions and seasons.

With the good comes the bad.

Floods have ravaged rural communities and crops, international attention has turned to conflict, property prices are, again, at record highs to challenge sustainability for young families and hikes in interest rates cast uncertainty in some markets for next year.

But the wheel turns and we prepare to do it all again.

We had resolved to grow this year and did so with the admission of our newest lawyer, Phoebe Wright, and promotion of Harriet Adcock to an Associate of our firm. Hannah Barbour returned to us as a Special Counsel and our paralegal ranks expanded with Nadine Hay joining us. We are grateful to them and our other team members, Mark Boge, Kathryn Larsen, Veronica Stewart and Max Rylance for their dedication throughout the year.

As a nation and an industry, we face more uncertainty in 2023 than any other time in recent memory though we know that risk usually brings opportunity to those who pursue it and the demand to feed and clothe mankind will never resolve.

We look forward to working for you again next year and into the future.

With best wishes for Christmas and 2023

Ari McCamley

Alex Ramsey





We're with AgForce: supporting Queensland's advocate for agricultural producers and communities



Ari McCamley
Partner

We are proud to announce that Thynne + Macartney has committed to a sponsorship arrangement supporting AgForce Queensland Farmers, formalising what we see as a logical alignment of our respective roles assisting primary producers.

Independently recognised by Doyles Guide as Queensland's leading Agribusiness firm, Thynne + Macartney continues to act for successive generations of farmers and graziers in Queensland, the Northern Territory and the border river areas of northern New South Wales.

We have maintained a strong working relationship with AgForce over many years. Our late colleague, Bill Loughnan, was the legal advisor on AgForce's formation as a union of employers in 1999. Alex Ramsey and I, and members of our team, have devoted significant volunteer hours to AgForce's policy committees over the past six years.

In recent times, we have witnessed AgForce's voice grow stronger, and its initiatives become more relevant to many our clients, and we expect those trends will continue.

The work we do each day for our clients and the work AgForce undertakes on behalf of the industry should be strengthened by our collaboration.

ACC-U Later: Second Window Now Open to Exit Fixed Delivery Carbon Abatement Contracts



Harriet Adcock
Associate

In August, we [shared an overview](#) of the Clean Energy Regulator's proposal to allow contract holders to exit Fixed Delivery Carbon Abatement Contracts with the Commonwealth Government.

If you missed that article, click [here](#) for a complete list of the eligibility criteria and steps to participate.

The first "pilot" exit window closed on 30 June 2022. As at 11 October 2022, the Clean Energy Regulator has reported over 2.6 million Australian Carbon Credit Units (**ACCUs**) had been released under exit arrangements.

Those ACCUs will instead be traded at spot market prices.

Following the pilot, a second exit window is now open.

Exit applications for the second window must be submitted before 11:59pm on Tuesday, 14 February 2023 (AEDT).

For those interested in applying, a reminder that in determining eligibility for the exit arrangements, the Clean Energy Regulator will assess and consider:

- milestone delivery dates;
- the seller's compliance with their contract;
- whether the Seller is in good standing with the CER; and
- the benefit sharing framework.

Any proposed benefit sharing agreements proposed by third party service providers should be considered carefully before a landowner signs.

Thynne + Macartney Agribusiness Partner, Alex Ramsey and Special Counsel, Hannah Barbour are approved Carbon Advisors under the Land Restoration Fund and are available to help contract holders navigate their exit arrangements.





More than junk mail: Some post you should never ignore



Riley McDermott
Associate

We have recently been called upon to assist clients who overlooked, with potentially dire consequences, important documents. While a demand from a creditor is always serious, there are two key documents which, if you receive, you should never ignore. They are:

1. a statutory demand; and
2. a director penalty notice (DPN).

We explain below what these documents are, why it is important you act quickly in response and what you can do if you receive one of these documents.

Statutory demands

A statutory demand is a creditor's formal, written request requiring a company to pay, or otherwise deal with, a debt within 21 days of service (being the time the document is delivered, not necessarily when it is read). The document is usually accompanied by an affidavit to explain the debt claimed.

A company served with a statutory demand has three options to deal with it – strictly within 21 days:

1. pay the debt in full, in which case the statutory demand will be at an end;
2. apply to the Court for the statutory demand to be set aside, eg. because there is a genuine dispute about the existence or amount demanded, because the company itself has an off-setting claim or because the demand is otherwise defective; or
3. convince the creditor who has served the demand to withdraw it for no payment, or for an agreed lesser sum.

In our experience, statutory demands often contain technical defects in their drafting and/or there is some genuine dispute between the parties which makes them capable of being set aside. However, if nothing is done within the 21-day period, the opportunity to raise those arguments is usually lost.

If your company fails to complete any of the above three options within the 21 days, it will be presumed to be insolvent. This presumption will entitle the creditor who served the statutory demand to apply to Court for orders that your company be wound up. It is then difficult, and expensive, to successfully oppose a winding up application, which also forms part of the public record.

If you receive a statutory demand (which will be clearly marked on the document) you should therefore take immediate action and obtain legal advice.

Director Penalty Notices

A DPN is a notice which can be issued to a director of a company that has failed to meet certain obligations enforced by the ATO (PAYG, GST, superannuation guarantee contribution and others). The purpose of a DPN is to make a director personally liable for a company's debts in certain circumstances.

Once again, the timeframes for responding to a DPN are tight and the consequences of failing to act are drastic.

Takeaways

1. Always take demands by creditors seriously.
2. DPNs and statutory demands do not need to be served upon you personally. They can be served at the addresses you register with ASIC for your company. Make sure these addresses are up to date and that post is regularly monitored. Courts are not sympathetic to these documents being "overlooked".
3. If you receive any document which requires formal action within a tight timeframe, like a statutory demand or a DPN, you should get legal advice as soon as possible.

Wake-up call for cyber security



Phoebe Wright
Lawyer

The theft of personal information concerning 9.8 million Optus customers and a similar number of Medibank customers highlights the likelihood that at least some details identifying each Australian is accessible to criminals.

To mitigate the risks of falling victim to identity theft or a hacking incident online, the following measures are recommended:

1. Attend and ensure people with access to your electronic information systems regular cyber security training (online options are available).
2. Use multi-factor authentication on all online accounts where offered.
3. When bank account details are received via email, always call the recipient on a verified telephone number to verify that the email hasn't been intercepted and changed by a criminal.
4. If an email is received requesting funds or personal information which purports to be from a government agency or a bank, always call the entity before responding. Similarly for phone calls, call the entity back via their published telephone number to confirm it is in fact that entity.
5. Check that emails are in fact from the purported sender and never click on links in an email from an unknown source.
6. Maintain up-to-date security software on all connected devices
7. Never store passwords or pin numbers in electronic files unless that file is securely encrypted.





A roadmap towards low emissions agriculture



Hannah Barbour
Special Counsel

A draft 'Low Emissions Agriculture Roadmap 2022-32' (**Roadmap**) has been introduced by the Queensland Government and is promoted as a guide to help agribusinesses lower their emissions and take advantage of related opportunities across the economy.

The Roadmap sets out what the Government will invest in, investigate the feasibility of or raise awareness of. It then sets out some broad suggestions of what agribusinesses can do now to lower emissions.

In the background, there is increasing concern in the livestock industry about what the industry will ultimately be asked to do to account for methane emissions. Unfortunately, the Roadmap does not provide any clarity on this issue. The Roadmap indicates that the Government will support industry investment in the research, commercialisation and adoption of novel forages and dietary supplements that reduce methane production in the red meat and dairy industries and will support investigation into the feasibility and design of a carbon neutral certification accreditation scheme for the livestock industry. The Roadmap then suggests that producers should start to introduce methane reduction stock feeds and supplements when commercially available.

As we continue to see consumer expectations for sustainably grown food and fibre increase, the suggestion of greater collaboration between government and industry is certainly a step in the right direction. However, the Roadmap has some way to go before it can provide agricultural industries with any comfort about the everchanging expectations on the industry to reduce greenhouse gas emissions and increase carbon capture in the landscape.

The draft Roadmap is now with the Minister for consideration after the feedback period was completed in August this year. A copy of the draft can be obtained from the [Queensland Government's website](#).

We support local businesses such as
Ann Britton Photography of Boulia

Ann Britton Photography provides unique rural and agricultural photography services across Queensland, Australia.

 www.annbrittonphotography.com.au  [@annbrittonphotography](https://www.instagram.com/annbrittonphotography)

Water entitlements buy-back scheme confirmed



Phoebe Wright
Lawyer

The Federal Government's 2022 budget announcement revealed funding will be set aside to conduct water entitlement buy-backs from irrigators in the Murray-Darling Basin.

The action is a last-ditch attempt to reach the 2024 target enshrined in legislation eight years ago to return 450 gigalitres of water to the environment. At this stage, 2.6 gigalitres has been achieved. The total figure set aside to fund the buybacks has been withheld due to "commercial sensitivities" and a desire to avoid distorting the water market.

Buyback schemes have remained unpopular in rural communities for triggering rises in the price of water entitlements while local economies declined. When the Government commenced water buy-backs in 2008, an open tender process was adopted whereby farmers could elect to sell their water rights to the Government at market price which led to anomalies in the trade of water between private water holders.

In 2015, following a drop in participation in the tender process and rural communities voicing their displeasure at the impact of water buybacks on their regions, the Commonwealth commenced pursuing closed negotiations directly with irrigators with some limited-tender processes remaining.

This time around, given less than 0.55% of the water buyback target has been met, the Commonwealth is likely to adopt a more robust approach to the buybacks which will again muddy the market forces within the water market.

Are you Biosecurity Ready?



Nadine Hay
Paralegal

Four ways to make sure you are biosecurity ready

1. review and update your biosecurity plan;
2. complete a Property Identification Code (PIC) reconciliation to ensure that your records are complete, up-to-date and correct;
3. renew, review and update your biosecurity entity; and
4. monitor and report symptoms.

Is your biosecurity entity up-to-date?

The threats of lumpy skin disease and foot and mouth disease are reminders to ensure your compulsory biosecurity entity registration is up to date.

If you own or keep certain animals in Queensland, you must be registered as a biosecurity entity.

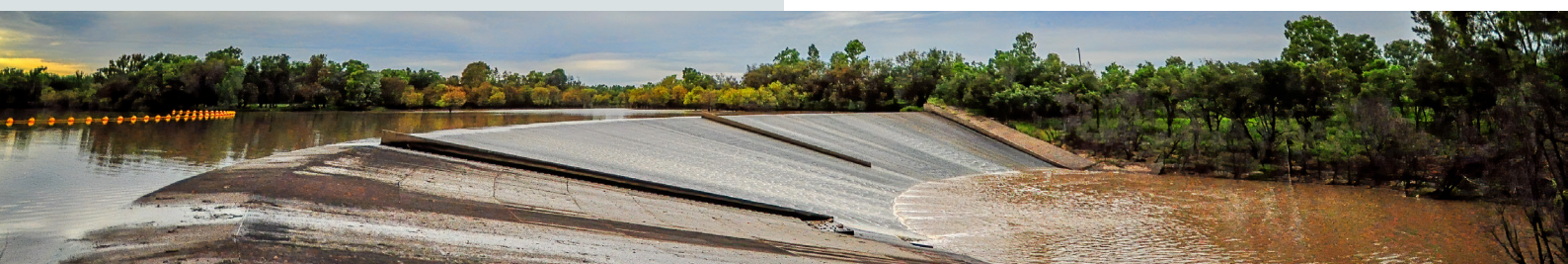
Registration as a biosecurity entity is current for three years from the date you apply, and you must confirm your registration renewal before the end of your existing term.

You may need to:

- update the species and numbers of animals you own or keep;
- add/remove a person;
- add/remove a PIC;
- add/remove PIC property information (lot on plan details); or
- add/remove an authorized user/landowner/occupier or contact to your PIC.

Sign into the Biosecurity Entity Registration Portal [here](#) to check your renewal due date and update your details.

Check if you are registered [here](#).



Bye Bye Branding



Nadine Hay
Paralegal

The Queensland Government is currently undertaking a review of stock identification laws that may mean producers will no longer be required to brand their livestock. The review is also considering alternatives to earmarks.

Across Australia, only Queensland and the Northern Territory currently have compulsory branding laws.

What may change?

If public opinion is in favour of deregulation, the proposed amendments to the Brand Act 1915 will leave the decision to brand livestock to the producer.

In practice, producers could be given the choice to apply for an exemption from branding requirements, or there could be a blanket removal of branding requirements, leaving producers with the choice as to whether they brand their livestock.

The review is also considering whether to continue to recognise earmark districts or whether to allow earmarks to be available for use anywhere in Queensland.

The Department aims to implement any changes arising from the review by 2024.

The Department stresses that livestock owners can continue to brand and earmark regardless of the outcome of the review.

Are you for or against?

It must be seriously questioned whether brands and earmarks still serve the biosecurity and identification purposes they once did given developments in newer identification technologies.

Any change to a system that trades archaic practices for improved animal welfare should be welcomed.

Have your say

The Department of Agriculture and Fisheries is asking for producer input to aid its decision. Have your say by completing the online survey [here](#).



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Meet the Agribusiness team

Thynne + Macartney has one of Australia's leading practices in agribusiness. Multiple generations of farmers and graziers have drawn on our experience to help them reach robust business agreements promptly – from sales and purchases of rural properties to plans for the future.

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Upcoming regional visits for 2023

	LOCATION		LOCATION
23 – 25 APRIL	Goondiwindi / Moree / Narrabri	22 – 23 JUNE	Emerald
12 MAY	Rockhampton	13 OCTOBER	Cloncurry
23 – 24 MAY	Alpha	26 – 27 OCTOBER	Emerald / Clermont
30 – 31 MAY	Longreach / Muttaborra	2 – 3 NOVEMBER	Longreach
15 – 16 JUNE	Charleville / Roma	16 – 17 NOVEMBER	Roma

Appointments can be made by phoning (07) 3231 8747



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