



## Be ACCUrate Legal right and eligible interest holder consent webinar – questions and answers

This document contains the questions and answers provided during the Be ACCUrate webinar held on 26 June 2025. You can access a [recording of the presentations](#)<sup>1</sup> from this webinar on our YouTube channel.

The information provided in this document was accurate at the time of the webinar and is subject to change.

### How does legal right and eligible interest holder consent apply to an emissions avoidance project, for example, a fuel switching project?

Eligible interest-holder consent does not apply to non-area based emissions avoidance projects (such as fuel switching projects).

For emissions avoidance projects, legal right relates to the proponent's relationship to:

- the location where the activity happens and who this is owned by
- where the equipment is located and who it is owned by.

If the project proponent owns both the land and the equipment, they have legal right and can earn Australian carbon credit units (ACCUs).

If the proponent doesn't own the land or equipment—like a carbon service provider—they'll need to get legal right from the owners. This is usually done through a contract or a formal letter from the authorised parties.

Each project is different, so the legal right arrangements can vary depending on the situation.

There are examples of obtaining legal right for projects with different legal right scenarios at the end of our [Legal right and native title](#)<sup>2</sup> guidance.

### If a project has 10 land titles and the Crown Lands Minister only gives consent for 3 of them, can the proponent assume that the Minister meant to consent to all 10?

When we assess eligible interest holder consent, we look at whether consent has been given for each land title in the project area—not just the whole area as a single block.

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<sup>1</sup> <https://www.youtube.com/watch?v=0BwG6Xhsdgl>

<sup>2</sup> <https://cer.gov.au/schemes/australian-carbon-credit-unit-scheme/how-to-participate/plan-your-project/legal-right-and-native-title>



If some titles are Crown leases, the Crown Lands Minister must give consent for each of those. If others are freehold, the Minister doesn't need to consent to those.

So, if a project has 10 land titles and only 3 are Crown leases, the Minister only needs to give consent for those 3. But if all 10 are Crown leases, the Minister must give consent for each one individually.

It's important to double-check your [consent forms](#)<sup>3</sup> to make sure all relevant land titles are covered before submitting your application. This helps avoid delays.

See our guidance [Project resource 1: State and territory land law and summary of land rights law](#)<sup>4</sup>.

### **If a land title has an encumbrance, like a water pipeline, but that area is excluded from the project, do you still need consent from the water authority?**

If the water pipeline is located within the project area but contained within an exclusion area, it's still considered to be part of the registered project. So yes, you still need consent from the water authority for that area to be included in the project.

The only way to avoid needing their consent is to remove the pipeline area entirely from the project area.

### **Do all easements automatically require eligible interest-holder consent, or can some—like road access, drainage, or utility easements—be considered too minor or unrelated?**

Eligible interest holders include anyone with a legal interest in the land your project is on. This can include holders of road access, drainage, or utility easements—even if those interests seem minor.

Consent is needed to make sure these stakeholders understand the project and any potential impacts.

It's important that they know what they're agreeing to. Sections 43 to 45 of the [Carbon Credit \(Carbon Farming Initiative\) Act 2011](#)<sup>5</sup> (CFI Act) list who counts as an eligible interest holder. Contact us by emailing [enquiries@cer.gov.au](mailto:enquiries@cer.gov.au) if you're unsure about a specific case.

### **If the landholder and project proponent are the same, and there are no easements or other interests on the land, do they still need to provide any forms? Are they considered an eligible interest holder?**

No, they don't need to provide any consent forms for their project. This is a straightforward case, but it's not very common in the ACCU Scheme.

### **If a landholder has already given legal right to a project proponent, and new land titles (also owned by the same landholder) are added to the project, do they need to provide a new legal right or consent form for those new titles?**

Yes, they'll need to provide updated legal right and eligible interest holder consent for the new land titles being added. Even though it's the same landholder, each land title must be covered in the documentation.

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<sup>3</sup> [https://cer.gov.au/document\\_page/cer-accu-eih001-eligible-interest-holder-consent-form](https://cer.gov.au/document_page/cer-accu-eih001-eligible-interest-holder-consent-form)

<sup>4</sup> <https://cer.gov.au/document/state-and-territory-land-law-and-summary-land-rights-law>

<sup>5</sup> <https://www.legislation.gov.au/C2011A00101/latest/text>



This can be done by providing the following along with your application to [vary your project to add area](#)<sup>6</sup>:

- an updated or new legal right agreement that includes the new land titles
- eligible interest holder consent forms from all new eligible interest holders for the added land.

### **What happens with legal right and eligible interest-holder consent when a project moves from an older method to a newer one? For example, when switching from the 2017 to the 2022 plantation forestry method.**

Legal right needs to be maintained for the life of the project.

If the project is registered unconditionally and you choose to vary the project from the 2017 to the 2022 plantation forestry method, there is no need to provide new eligible interest holder consents.

However, it's important to check the method, the [Carbon Credit \(Carbon Farming Initiative\) Rule 2015](#)<sup>7</sup> ( the CFI Rule) and CFI Act details or contact us by emailing [enquiries@cer.gov.au](mailto:enquiries@cer.gov.au) if you're unsure. For example, if you are registered on a savanna fire management emissions avoidance method and choose to move to the savanna fire management emissions avoidance and sequestration method, all persons who hold an eligible interest in the project area of the affected area need consent to the making of the application.

### **If the landholder provides legal right to a project proponent, such as a carbon service provider, is the landholder now considered an eligible interest holder that needs to provide eligible interest holder consent?**

Yes, the landholder needs to provide both legal right and eligible interest holder consent—they're 2 separate legal requirements.

If the landholder is also the project proponent, they don't need to give themselves consent.

But if they're different entities, even if closely related (like John Smith being the landholder and Smith Pty Ltd being the proponent), then both:

- John Smith must give eligible interest-holder consent
- there must be a legal right agreement showing John Smith has given rights to Smith Pty Ltd.

### **Can a landholder take back the legal right they gave to a project proponent? What happens if they do?**

Yes, a landholder can rescind legal right. But it depends on the terms of the original agreement.

We recommend the landholder gets independent legal advice to understand the agreement and any impacts on the project. If a project proponent loses legal right, we must be notified within 90 days, and the project may need to be revoked.

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<sup>6</sup> <https://cer.gov.au/schemes/australian-carbon-credit-unit-scheme/how-to-participate-accu-scheme/making-changes-to-your-project#vary-your-project-area>

<sup>7</sup> <https://www.legislation.gov.au/F2015L00156>



## **If freehold land with a registered ACCU project is sold, and the new owner wants to become the project proponent, do they need to get eligible interest holder consent again?**

If the project is already registered unconditionally, then no new consent is needed just because the proponent changes.

If the project is registered with conditions, the new owner as project proponent will need to obtain all outstanding consents from persons with an interest in the land before the end of the first reporting period.

If there's a native title determination within the project area, we will take all reasonable steps to:

- notify the registered native title body corporate of the application to change proponent
- invite the registered native title body corporate to make a submission about the application at least 28 days after the date the notice is issued.

We may consider submissions submitted after the 28 days if more time/resourcing is required. This may delay application processing times.

It is best practice for project proponents to engage early and often.

You can visit [Native Title Vision](#)<sup>8</sup> to see if there is native title land on your project area.

## **What changes have been made to the eligible interest holder consent form?**

There are no major changes to the requirements. The updates mainly include:

- using the new name Australian Carbon Credit Unit Scheme instead of Emissions Reduction Fund.
- added information to help eligible interest holders understand permanence obligations.
- that the form must now be submitted via our Online Services, rather than by email.

See the new [Generic ACCU Scheme eligible interest holder consent form](#)<sup>9</sup>.

## **If a land title is freehold but mentions rights and interests reserved to the Crown, is eligible interest holder consent required?**

It depends on the nature of the Crown's interest. The proponent should do their own due diligence and check with their state land management authority. Generally, you'll need to either:

- provide consent from the Crown
- submit information showing that the Crown's interest doesn't affect the project and doesn't require consent.

See our guidance [Project resource 1: State and territory land law and summary of land rights law](#)<sup>10</sup>.

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<sup>8</sup> <https://www.nntt.gov.au/assistance/Geospatial/Pages/NTV.aspx>

<sup>9</sup> [https://cer.gov.au/document\\_page/cer-accu-eih001-eligible-interest-holder-consent-form](https://cer.gov.au/document_page/cer-accu-eih001-eligible-interest-holder-consent-form)

<sup>10</sup> <https://cer.gov.au/document/state-and-territory-land-law-and-summary-land-rights-law>



## What are the requirements if the land in the project area is held in a trust?

The project proponent must be a legal entity responsible for the project. Since a trust isn't a legal entity on its own, the trustee (who is a legal entity) must act on behalf of the trust and be listed as the project proponent. The trustee can also provide legal right to a project proponent (E.g. a carbon service provider) to run the project on land owned by the trust.

In relation to trusts, you need to provide the following along with your proof that the project proponent (the trustee) has legal right to conduct the project:

- A certified copy of the trust deed and any updates or variations to it. This serves as proof of the trust's existence and terms.
- If the trustee is an individual, you'll need to provide identification documents for that individual.
- If the trustee is a company, you may need to provide documentation such as an ASIC extract or documentation showing the trust's assets are held by that company.

See our guidance on [choosing an ACCU Scheme project proponent](#)<sup>11</sup>.

## What happens if my project is registered before a native title claim on my land is decided?

It is best practice and our expectation that you engage with traditional owners early in the planning stages of your project and often, especially if there is a native title determination or claim on the land where you wish to conduct your project.

When we assess a project for registration, we check the native title status at that time.

If there are no eligible interest holders applicable to the project area at that time, the project is declared unconditional.

If your project has been conditionally declared due to other outstanding consents and native title is determined before the project is registered unconditionally, the registered native title bodies corporates will become eligible interest holders and consent will need to be obtained.

If native title is determined after the project is declared unconditionally, you will not need to obtain consents except if you apply to vary the project, for example to add land to the project area.

If an exclusive native title determination is made at any time during the project, then the proponent would lose legal right and would need to successfully negotiate a legal right agreement with the native title holder to continue the project.

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<sup>11</sup> <https://cer.gov.au/schemes/australian-carbon-credit-unit-scheme/how-to-participate-accu-scheme/plan-your-project/choose-accu-scheme-project-proponent>



## Can the Clean Energy Regulator accept eligible interest-holder consent in a format other than the official form—like a detailed written letter from the consent holder?

You must use the official eligible interest-holder consent form when submitting consents for area-based projects. The only exception is when the consent is set out in a registered Indigenous Land Use Agreement (ILUA) under the *Native Title Act 1993*. In this case you can provide the ILUA.

You can download the generic form here: [Generic ACCU Scheme eligible interest holder consent form](#)<sup>12</sup>.

If your project is under the [blue carbon method](#)<sup>13</sup>, you must use the blue carbon specific EIH consent forms:

- » [EIH consent form for land within the project area for blue carbon projects](#)<sup>14</sup>
- » [EIH consent form for land outside the project area for blue carbon projects](#)<sup>15</sup>

There are also specific forms for seeking EIH consent from the Crown Lands Minister of Western Australia:

- » [EIH consent form for Western Australia Crown Lands Minister – for savanna fire management projects](#)<sup>16</sup>.
- » [EIH consent form for Western Australia Crown Lands Minister – for human-induced regeneration projects](#)<sup>17</sup>.

## If you add new land to a project after it's already registered or has started earning ACCUs, do you need to get consent again for the new land?

Yes, consent is needed for each land parcel. You need to get consent for the new area of land being added even if the same eligible interest holders had previously consented to the existing area.

If the new land involves different interest holders (for example, a different bank holds a mortgage), you'll need to get consent from them when adding that land to the project.

## Can you update us on proposed legislative changes and whether that means that the Clean Energy Regulator will no longer conditionally declare projects, and instead require all consents at the time of registration?

The Australian Government is strengthening the integrity of the ACCU Scheme and is doing ongoing work in response to the:

- [2022 Independent Review of Australian Carbon Credit Units](#)<sup>18</sup> (the ACCU Review)

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<sup>12</sup> [https://cer.gov.au/document\\_page/cer-accu-eih001-eligible-interest-holder-consent-form](https://cer.gov.au/document_page/cer-accu-eih001-eligible-interest-holder-consent-form)

<sup>13</sup> <https://cer.gov.au/schemes/australian-carbon-credit-unit-scheme/accu-scheme-methods/tidal-restoration-blue-carbon-ecosystems-method>

<sup>14</sup> <https://cer.gov.au/document/cer-accu-bc001-eligible-interest-holder-consent-form-land-within-project-area-blue-carbon-projects>

<sup>15</sup> <https://cer.gov.au/document/cer-accu-bc002-eligible-interest-holder-consent-form-land-outside-project-area-blue-carbon-projects>

<sup>16</sup> <https://cer.gov.au/document/eligible-interest-holder-consent-form-western-australia-crown-lands-minister-savanna-fire-management>

<sup>17</sup> <https://cer.gov.au/document/eligible-interest-holder-consent-form-western-australia-crown-lands-minister-human-induced>

<sup>18</sup> <https://www.dcceew.gov.au/climate-change/emissions-reduction/accu-scheme/reviews-and-reforms/independent-review-accus>



- [Climate Change Authority \(CCA\)'s 2023 Review of the Carbon Credits \(Carbon Farming Initiative\) Act 2011](#)<sup>19</sup>

Recommendation 11 of the ACCU Review was that the CFI Act be amended to remove the option to conditionally register ACCU projects on Native Title lands before obtaining consent.

On 20 February 2025, the [Assistant Minister for Climate Change and Energy](#)<sup>20</sup> announced that the government would remove the ability to conditionally register projects on Native Title lands and introduce a requirement to secure upfront consent from Native Title holders prior to project registration.

Implementing these changes to the consent process on Native Title lands will require the introduction of legislative amendments. Feedback from consultation has been informing the development of these amendments. Changes will be introduced as soon as possible, consistent with the government's legislation priorities.

Until these amendments to the legislation have been made, we are required to follow the current legislation, which means we must still accept project registration applications without all consents.

We've put some processes in place to prepare for these changes. For example, we now ask in the project registration form whether you've followed free, prior and informed consent principles. This is considered best practice and helps prepare for future legal requirements.

When registering a project, we want to see that you've identified your eligible interest holders and have a process in place to work with them and are using best practice engagement.

Read more about how the government is implementing reforms to the ACCU Scheme here: [Implementing reforms to the ACCU Scheme - DCCEEW](#)<sup>21</sup>.

### **If you're removing one of two project proponents, do you need to update the legal right to show that the outgoing proponent no longer has legal right?**

Yes. We need to be sure that incoming proponent has sole legal right. This includes evidence that the person being removed as a proponent no longer holds legal right.

The easiest and best way to show this is by providing an updated legal right agreement. However, we can also accept a written statement from the outgoing proponent confirming they no longer have legal right or that they agree to be removed from the project.

Including this information with your variation application will help speed up the process.

See [Making changes to your project](#)<sup>22</sup>.

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<sup>19</sup> <https://www.dcceew.gov.au/climate-change/emissions-reduction/accu-scheme/reviews-and-reforms/cca-review-accu-scheme>

<sup>20</sup> <https://minister.dcceew.gov.au/wilson/speeches/speech-7th-north-australia-savanna-fire-forum-darwin>

<sup>21</sup> <https://www.dcceew.gov.au/climate-change/emissions-reduction/accu-scheme/reviews-and-reforms/implementation>

<sup>22</sup> <https://cer.gov.au/schemes/australian-carbon-credit-unit-scheme/how-to-participate-accu-scheme/making-changes-to-your-project>



## If a project proponent has made genuine efforts to engage with an eligible interest holder, but that person refuses to participate, can the Clean Energy Regulator help—like through dispute resolution?

We do not get involved in third-party disputes or agreements. If an eligible interest-holder won't engage, there's nothing we can do to resolve that.

We understand sometimes these conversations can be complex. If there are delays in obtaining consents, proponents must contact us before the latest deadline of the end of the first reporting period.

If consents cannot be provided, the project will need to be [varied or revoked](#)<sup>23</sup>. To manage this risk, it is important project proponents start engagement as early as possible.

## Are there any helpful resources we can share with eligible interest-holders to help them understand their role in carbon projects?

Yes, there are several useful resources you can share with eligible interest-holders to help them understand their rights and responsibilities in carbon projects:

- Our [Native title, legal right and eligible interest holder consent guidance document](#)<sup>24</sup>.
- Our online guidance on [Legal right and native title](#)<sup>25</sup>.
- Carbon Market Institute's [Carbon Industry Code of Conduct](#)<sup>26</sup> which provides a range of resources to assist engagement with First Nations stakeholders.
- [Indigenous Carbon Industry Network](#)<sup>27</sup> (ICIN) provides practical tools and guidance for Indigenous groups involved in carbon projects, including how to assess legal rights and participate in project planning, as well as guidance on best practice engagement with Indigenous stakeholders.
- Australian Banking Association's [Seeking eligible interest holder consent from your bank guidance](#)<sup>28</sup> provides an overview of the process your bank will take when providing consent for carbon or biodiversity projects.
- Queensland Government's [Carbon rights on state land guidance](#)<sup>29</sup> provides guidance for Queensland projects on land under a perpetual or term lease or occupation licence, on applying for consent from the Queensland Government.

**If this webinar has raised any questions about your specific project, feel free to reach out to your assessment team or contact us through our enquiries-mailbox at [enquiries@cer.gov.au](mailto:enquiries@cer.gov.au).**

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<sup>23</sup> <https://cer.gov.au/schemes/australian-carbon-credit-unit-scheme/how-to-participate-accu-scheme/making-changes-to-your-project>

<sup>24</sup> <https://cer.gov.au/document/native-title-legal-right-and-eligible-interest-holder-consent-guidance>

<sup>25</sup> <https://cer.gov.au/schemes/australian-carbon-credit-unit-scheme/how-to-participate-accu-scheme/apply-to-participate-accu-scheme/eligible-interest-holder-consent>

<sup>26</sup> <https://carbonmarketinstitute.org/code/consumers/indigenous-engagement/>

<sup>27</sup> <https://www.icin.org.au>

<sup>28</sup> <https://www.ausbanking.org.au/wp-content/uploads/2022/11/ABA-Fact-Sheet-Seeking-Eligible-Interest-Holder-Consent.pdf>

<sup>29</sup> <https://www.qld.gov.au/environment/land/state/use/carbon-rights/carbon-rights-apply-eligible>