Koalas for Coal

How the Improved Native Forest Management Method Ties Koala Protection to Fossil Fuel Expansion

From 2015, NSW Government policy was to establish the Great Koala National Park to help protect koalas from logging on public land. In late 2025, the NSW Government changed long-held, unconditional promise to be conditional on the Park being a carbon offset project. The credits generated from the project will enable the coal and gas industry and other big industrial polluters to cause more climate pollution than would otherwise be the case as the more credits that are created, the more pollution is allowed to occur under the Safeguard Mechanism. While Commonwealth Government policy is based on the idea that the harm from fossil fuel emissions can be 'offset' via the purchase of carbon credits, climate science does not support this approach. The harm to the climate system caused by fossil fuels cannot be undone by the Koala Park because it does not permanently remove carbon from the atmosphere and would likely have been established anyway. The legislative instrument that would allow the Park to generate carbon credits, which is currently before the Federal Parliament, should be disallowed.

Working paper

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Summary

NSW Labor first promised to establish the Great Koala National Park (**GKNP**) in 2015 and promised to do so again in early 2023. **This election promise was not contingent on the registration of a carbon offsets project.** Subsequent policy announcements by the Minns Labor Government in late 2023 likewise did not indicate any such contingency.

Some two years later, in September 2025, the Minns Government publicly announced the Park's boundary and imposed a temporary moratorium on timber harvesting within the proposed park boundary. It also announced that the final creation of the park was "dependent on the successful registration of a carbon project" under the federal Government's Australian Carbon Credit Unit (**ACCU**) Scheme.

In the intervening period, the NSW Government had been developing the 'Improved Native Forest Management Method' (**INFM Method**), a carbon crediting methodology that was ultimately adopted by the Commonwealth Government under its ACCU Scheme on 25 June 2026. The INFM Method was established in a Methodology Determination—a legislative instrument—that is currently before the Federal Parliament, where it can be disallowed by a majority in either house within 15 sitting days.

If the INFM Method is allowed to stand, it will enable the GKNP to be registered as an offsets project, meaning it will generate carbon credits that fossil fuel companies or other industrial polluters will be able to buy to meet their legal obligations under the Safeguard Mechanism instead of reducing their own onsite greenhouse gas emissions. For example, BHP recently abandoned plans to replace its diesel haulage trucks for electric trucks as it was cheaper to meet its obligations under the Safeguard Mechanism by buying offsets like those that will be generated under the INFM method.

The INFM Method suffers from two flaws that undermine the integrity of credits generated under it, rendering them inappropriate to be used as 'offsets' for actual emissions caused by entities regulated by the Safeguard Mechanism.

First, the Method will allow carbon abatement projects, like the GKNP, that are not genuinely 'additional' to what would have occurred in the ordinary course of events. **The Method substitutes the two relevant default 'additionality' requirements under the relevant Act with a new additionality requirement and simultaneously exempts states from the new requirement in circumstances that are tailored precisely to the NSW GKNP.** The regulatory reverse-engineering entailed in this exemption makes a mockery of the additionality criterion, which is foundational to any attempt to demonstrate carbon credit integrity, and raises important questions about process and policy that should be asked of the Albanese Government and the ACCU Scheme.

Second, the Method would result in carbon credits being generated for temporary carbon storage (100 years) that will be used to “offset” actual carbon dioxide emissions (or other greenhouse gases), a large fraction of which lasts in the atmosphere for thousands of years. Therefore, **even if the GKNP were additional, it still would not be capable of undoing the harm to the climate system caused by fossil fuel or other industrial emissions.**

The end result is that the INFM Method will cause more climate change than would otherwise be the case. The legal gymnastics on display in the Method, which creates a new ‘additionality’ criterion and simultaneously exempts the GKNP from that criterion, will further undermine public, industry and international confidence in the sincerity and integrity of Australian climate policy.

Perhaps the most concerning thing about the INFM Method is the precedent that it establishes. Experts have long pointed out the potential for companies to ‘game’ the counterfactual storytelling exercise that underpins any claim that a proposed carbon abatement project is ‘additional’ to what would have occurred in the ‘ordinary course’ of events. But the INFM Method takes this concern to a new level because it enables carbon credits to be issued to *state governments* for essentially doing their job: protecting the native forests that store carbon and sustain biodiversity. If this Method is allowed to stand, no rational state government will ever again unilaterally protect public forests unless they can get carbon credits for doing so. Worse, **by allowing the Method, the Parliament would be effectively encouraging states to refrain from *any climate mitigation measure at all* unless and until they can identify a method—or create a new one—that will enable them to generate financially valuable carbon credits via the Commonwealth’s ACCU scheme.** In this respect, the Method raises broader questions about fiscal and climate policy in Australia’s federal system that need urgently to be addressed.

Despite the important issues of principle raised by the Method, the Commonwealth Government illegally failed to publish the submissions from a public consultation into the Method for more than six months, stifling informed public debate and Parliamentary scrutiny of the Method’s problems.

Introduction

The humble koala is at risk of extinction from multiple threats, not least the logging of its habitat and bushfires supercharged by climate change.[1] In 2023, the NSW Government committed to help mitigate one of these threats by establishing the Great Koala National Park (**GKNP**) on the Mid North Coast of NSW, thereby protecting koala habitat from logging. In doing so, the Government was delivering on an election promise first made by NSW Labor when in opposition in 2015. But now the Government says that this protection is conditional on the Park being turned into a carbon offsets project under the Federal Government's Australian Carbon Credit Unit (**ACCU**) Scheme. This would mean that the carbon stored temporarily in the trees supporting the koala's existence could be monetised through the creation of carbon offsets that will make it easier for the coal and gas industry, and other industrial polluters, to cause more of the climate pollution that is burning those trees down.

To register a project as an eligible offsets project under the ACCU Scheme, the project has to use a prescribed *method* for avoiding or sequestering carbon. A method is legally established through something called a 'methodology determination', which is a legislative instrument made by the relevant minister under the federal legislation establishing the ACCU Scheme, the *Carbon Credits (Carbon Farming Initiative) Act 2011* (Cth). The making of new methodologies has to be preceded by a process laid down in that legislation, including review by the Emissions Reduction Assurance Committee (**ERAC**)—the Commonwealth Government body that oversees the development of new ACCU methods and provides advice to the relevant federal minister concerning their adoption—and public consultation.[2]

Since no existing methods would have applied to the GKNP, the NSW Government proposed its own—the 'Improved Native Forest Management method' (**INFM Method**)—and worked with the Commonwealth to develop it. The ERAC ran a public consultation on the Method in January 2026 and ultimately recommended its approval to the relevant federal Minister, who made the relevant methodology determination on 25 June 2026.[3] This paved the way for the NSW Government to apply to have the GKNP registered as an eligible offsets project under the ACCU Scheme. The NSW Climate Change Minister Penny Sharpe confirmed on 28 July 2026 that her Government had indeed submitted the GKNP for registration.[4]

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[1] Lily M van Eeden et al, *Impacts of the unprecedented 2019-2020 bushfires on Australian animals*, Report prepared for WWF-Australia (2020); Valentina S A Mella et al, 'Hot climate, hot koalas: the role of weather, behaviour and disease on thermoregulation' (2024) 27 *Conservation Physiology* 12(1): coae032.

[2] *Carbon Credits (Carbon Farming Initiative) Act 2011* (Cth) pt 9.

[3] Carbon Credits (Carbon Farming Initiative—Improved Forest Management in Multiple-use Public Native Forests) Methodology Determination 2026 (Cth). It was made by the Assistant Minister for Climate Change and Energy on 25 June 2026 and is available at https://www.legislation.gov.au/F2026L00835/latest/text.

[4] Penny Sharpe, 'Media Statement: ACCUs Policy for The Great Koala National Park' (28 July 2026).

After setting out in more detail key background information concerning the NSW Government's commitments to establish the GKNP and the development of the INFM Method, this report highlights two sets of problems raised by the Method.

First, the longstanding promises by NSW Labor, in opposition and since forming government, to establish the GKNP show that the establishment of the Park is not 'additional' to what would likely have occurred in the ordinary course of events (the *additionality problem*). 'Additionality' is foundational to any attempt to demonstrate carbon credit integrity, as a project that would have occurred anyway could hardly justify earning carbon credits. The additionality principle is even enshrined in the Government's own Offsets Integrity Standards.[5] This paper will demonstrate the extraordinary regulatory gymnastics effected by the INFM Method in order to deem the GKNP to be additional, and it will highlight important questions of process and policy raised by these contortions.

Second, the storage of carbon in trees is inherently temporary—for 100 years at best, which is all that the Method requires (the *permanence problem*). Yet, when carbon dioxide (**CO_2**) is released into the atmosphere, a large fraction of it lasts for thousands of years. Treating vegetation-based credits as offsets for fossil fuel emissions is thus a form of institutionalised science denial. While this problem extends much wider than the INFM Method to encompass methods for all vegetation-based projects in the ACCU Scheme, that is not a good reason to ignore it on this occasion.

The paper will go onto explain how the generation of credits through the INFM Method will facilitate coal and gas extraction and emissions, and the expansion of coal and gas in both NSW and elsewhere in Australia. This is because the more ACCUs that are created, the more greenhouse gas emissions are allowed to occur at facilities regulated by the Commonwealth's Safeguard Mechanism. To be clear, this fact is not altered by the NSW Government's recent claim that "ACCUs from the Great Koala National Park will not be able to be sold to coal and gas projects",[6] for reasons that will be explained. Because of the additionality and permanence problems with those credits, the end result is that the INFM Method will lead to more emissions and more climate change than would otherwise occur.

In this regard, an important distinction needs to be clarified between the climate risks associated with *Commonwealth-funded* carbon credit projects as existed under the Coalition's Direct Action policy and the risks under Labor's Safeguard Mechanism. Under the former, the Commonwealth operated a grant-based scheme in which carbon credits were purchased from finite Commonwealth funds (the Emission Reduction Fund) as a means of allocating funding to various carbon sequestration and avoidance projects via reverse auctions. Significantly, under the Direct Action scheme, the carbon credits were not used to 'offset' emissions by third parties. This meant that any over-crediting through poor method

[5] *Carbon Credits (Carbon Farming Initiative) Act 2011* (Cth) s 133(1)(a).
[6] Penny Sharpe, 'Media Statement: ACCUs Policy for The Great Koala National Park' (28 July 2026).

design or lax application of standards 'merely' resulted in a waste of public money; it did not result in *worse* outcomes for the climate. Under Labor's Safeguard Mechanism, by contrast, any over-crediting from poorly designed methods literally results in an increase in greenhouse gas emissions as industrial polluters who emit more than their 'baseline' levels (i.e. the caps on their 'net' emissions) are entitled to do so as long as they acquire a nominally equivalent quantity of ACCUs as offsets.

Another significant difference between the old 'credit' regime and the new 'offset' regime is that whereas methods for carbon abatement were previously designed by the party *buying* the abatement (the Commonwealth Government), now methods like the INFM can be created by the company, or in this case the state government, seeking to *sell* ACCUs. This new 'proponent led'[7] regime obviously creates significantly bigger governance risks as methods are able to be designed by those who will receive the cash for selling the ACCUs generated from the application of those methods. In turn, the oversight role of the Commonwealth Parliament is now radically different.

Finally, the report makes a more fundamental point: perhaps the most concerning thing about the INFM Method is the precedent that it establishes. Experts have long pointed out the potential for companies to 'game' the counterfactual storytelling exercise that underpins any claim that a proposed carbon abatement project is 'additional' to what would have occurred in the 'ordinary course' of events—and they have shown how such gaming has led to high numbers of ACCU projects of dubious additionality. But the INFM Method takes this concern to a new level because it enables carbon credits to be issued to *state governments* for essentially doing their job: protecting the native forests that store carbon and sustain biodiversity. If this Method is allowed to stand, no rational state government will ever again unilaterally protect public forests unless they can get carbon credits for doing so. Worse, by allowing the Method, the Parliament would be effectively encouraging states to refrain from *any climate mitigation measure at all* unless and until they can identify a method—or create a new one—that will enable them to generate financially valuable carbon credits via the Commonwealth's ACCU scheme. In this respect, the Method inexorably leads us to broader questions about fiscal and climate policy in Australia's federal system that need urgently to be addressed.

The INFM Method thus raises fundamentally important and urgent policy questions that deserve to be fully debated by the Commonwealth Parliament. Thankfully, the Parliament now has that opportunity, for the fate of the INFM Method rests in its hands. Legislative instruments must be tabled before both houses of Parliament for 15 sitting days. During this time, they are subject to disallowance by either house, which requires a member of Parliament or senator to move a disallowance motion, and for a majority in the relevant

[7] The Hon Chris Bowen MP, Minister for Climate Change and Energy, 'Delivering the net in net zero with new proponent led ACCU methods' (21 May 2024) https://minister.dcceew.gov.au/bowen/media-releases/delivering-net-net-zero-new-proponent-led-accu-methods.

house to support that motion.[8] The coalition moved a motion to disallow the Method in the Senate on 30 June, which is scheduled for a vote on 18 August 2026.[9]

Unfortunately, the Commonwealth Government failed to publish the submissions from the ERAC's public consultation into the Method for more than six months, thus stifling informed public debate and Parliamentary scrutiny of the Method's problems. Given the Government's probably unlawful suppression of the submissions, it is hoped that this paper goes some way to informing public and Parliamentary debate about some of the Method's key problems and the policy questions it raises.

[8] See Parliament of Australia, 'No. 19 – Disallowance' (June 2025) https://www.aph.gov.au/About_Parliament/Senate/Practice_and_Procedure/Guides_to_Senate_Procedure/No_19.

[9] Jason Ross, 'Will the Greens Move on the Native Forest Carbon Model and its Dirty Money?', *Wood Central* (30 June 2026) https://woodcentral.com.au/native-forest-carbon-method-disallowance/.

From koala park to ACCU generator

NSW GOVERNMENT STATEMENTS REGARDING THE GKNP

NSW Labor promised to establish the GKNP in the lead up to the March 2023 NSW state election,[10] recommitting to a promise first made by then NSW Labor leader Luke Foley in 2015 and taken by the party to every subsequent state election.[11] When announcing the promise in January 2023, then Opposition Leader Chris Minns said: "When you see a situation where koalas have gone from not threatened to vulnerable to endangered to potentially extinct by 2050, we've got to take action".[12] No mention was made at the time of the Park's establishment being conditional on generating carbon offsets from the carbon stored in the koala's habitat.

In the 2023–24 state budget, delivered on 19 September 2023, the Minns Government committed $80 million to support the development of the GKNP.[13] Again, no mention of offsets.

The Minns Government's commitment to the GKNP was reaffirmed in November 2023, when it established three advisory panels to provide input into the creation of the Park. The Government's press release announcing this step stated that "The establishment of the advisory panels is another important step towards the NSW Government's commitment to save koalas in the wild".[14] Minister for the Environment Penny Sharpe said: "The creation of a Great Koala National Park is the Labor Government's most significant environmental commitment."[15] Again, no mention was made of the Park being contingent on generating carbon offsets.

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[10] Nick Parmeter, 'NSW Labor promises to create Great Koala National Park on Mid North Coast if elected', *ABC News* (19 January 2023) https://www.abc.net.au/news/2023-01-19/labor-great-koala-park-national-plan-grafton-to-kempsey/101871048.

[11] Labor, *Labor's Plan to establish Australia's First Great Koala National Park* (2015); Caitlin Fitzsimmons, '"Conservation outcomes don't get much bigger than this": Great Koala National Park announced', *The Sydney Morning Herald* (7 September 2025) https://www.smh.com.au/environment/conservation/conservation-outcomes-don-t-get-much-bigger-than-this-great-koala-national-park-announced-20250210-p5lat5.html.

[12] Parmeter (above n 10).

[13] See NSW Government, Environment and Heritage, 'Great Koala National Park' (last updated 9 April 2026) https://www.environment.nsw.gov.au/topics/parks-reserves-and-protected-areas/establishing-new-parks-and-protected-areas/changes-to-parks/great-koala-national-park.

[14] The Premier, Minister for Agriculture, Minister for Energy and Climate Change, Minister for Regional NSW, 'Ministerial media release: Update on the creation of the Great Koala National Park' (3 November 2023) https://www.nsw.gov.au/media-releases/great-koala-national-park-update.

[15] Ibid.

On 7 September 2025, the Minns Government "confirmed the next major step delivering on an election commitment to protect koalas in the wild", announcing (among other things) that:[16]

- "the park will reserve 176,000 hectares of state forest and connect with existing national parks to create a 476,000-hectare reserve – one of the largest in NSW";
- "The Government has imposed a temporary moratorium effective Monday 8 September 2025 on timber harvesting within the proposed park boundary";
- A package of "comprehensive assistance for impacted business and workers";
- "An additional $60 million in funding … for the NSW National Parks and Wildlife Service to support the establishment of the park. This is in addition to the $80 million announced in 2023"; and
- "The final creation of the park is dependent on the successful registration of a carbon project under the Improved Native Forest Management Method, which is currently moving through the Federal Government assessment processes".

This appears to be the first time that the Minns Government had publicly stated that the creation of the GKNP was somehow contingent on it being registered as an offsets project.[17] However, it was also reported at the time that "the NSW government said if this [the creation of the offsets project] was unsuccessful it would consider how best to deliver the park", suggesting that the Park would be established anyway.[18]

This progression from unconditional promise to ACCU-contingent conditional commitment matters because it goes to the heart of the additionality problem, discussed later.

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[16] NSW Government, Environment and Heritage, 'The Great Koala National Park' (7 September 2025) https://www.environment.nsw.gov.au/news/great-koala-national-park.

[17] In October 2023, during a Budget Estimates hearing in the Legislative Council, Premier Minns mentioned the potential to monetise NSW public forests via offset arrangements more generally in response to a general question about conservation of the NSW public forest estate, but the Premier did not (in response to that question or at any other point time during the hearing) refer to the GKNP specifically or indicate that its establishment would be contingent on it being registered as a carbon offset project. See Transcript of *Portfolio Committee No. 1 – Premier and Finance. Wednesday 25 October 2023. Examination of proposed expenditure for the portfolio area. PREMIER* (25 October 2025) 34, 45, available from https://www.parliament.nsw.gov.au/committees/inquiries/Pages/inquiry-details.aspx?pk=2992#tab-hearingsandtranscripts (relevant excerpts from the hearing are set out in Appendix 1).

[18] Caitlin Fitzsimmons, '"Conservation outcomes don't get much bigger than this": Great Koala National Park announced', *The Sydney Morning Herald* (7 September 2025) https://www.smh.com.au/environment/conservation/conservation-outcomes-don-t-get-much-bigger-than-this-great-koala-national-park-announced-20250210-p5lat5.html. See also Adam Morton, 'Park to protect 12,000 koalas to go ahead via contentious carbon credit deal by Albanese government', *The Guardian* (26 June 2026) https://www.theguardian.com/australia-news/2026/jun/26/great-koala-national-park-nsw-carbon-credit-deal.

DEVELOPMENT OF THE INFM METHOD

Behind the scenes, the Minns Government had been developing a proposal for a new methodology—the INFM Method—that would enable the Commonwealth Government to register the GKNP as an eligible offsets project under the ACCU scheme. It had also been liaising with the Commonwealth and carefully calibrating the GKNP's design and timing to ensure that the Park would ultimately be registered.

The INFM method "allows state governments to earn [ACCUs] by voluntarily ceasing planned harvesting in defined areas of multiple-use public native forests that would otherwise be used for commercial forestry".[19]

The development of the INFM method has been led by the NSW Government,[20] under the 'proponent led' process for creating ACCU Methods.[21] According to the NSW Government, the NSW Department of Climate Change, Energy, the Environment and Water (**DCCEEW (NSW)**) "contracted the Australian National University to help prepare the INFM method", and the proposed method "was subject to extensive technical and public consultation before being submitted for consideration to an independent statutory committee".[22]

The proposed method entered the Commonwealth Government's process for developing new ACCU methods in mid-2024. That process involved consideration by the ERAC, public consultation, and consideration by the Minister. The process unfolded as follows:

- On 21 May 2024, the Commonwealth invited public submissions of expressions of interest to develop ACCU methods;[23]
- On 12 July 2024, the NSW Government submitted an expression of interest to the Commonwealth Government relating to the INFM method;[24]
- At the request of the Commonwealth Minister, the ERAC assessed the expressions of interest and considered whether they would meet the Offsets Integrity Standards,

[19] Department of Climate Change, Energy, the Environment and Water (**DCCEEW (Cth)**), 'Improved Native Forest Management (INFM) method' (last updated 26 June 2026) https://www.dcceew.gov.au/climate-change/emissions-reduction/accu-scheme/methods/improved-forest-management.

[20] Ibid.

[21] Bowen, above n 7.

[22] NSW Government, Environment and Heritage, 'Improved Native Forest Management in Multiple-use Public Native Forests' (last updated 8 April 2026) https://www.environment.nsw.gov.au/topics/parks-reserves-and-protected-areas/npws-conservation/improved-native-forest-management-multiple-use-public-native-forests.

[23] Explanatory Statement Issued by the authority of the Assistant Minister for Climate Change and Energy. Carbon Credits (Carbon Farming Initiative) Act 2011. Carbon Credits (Carbon Farming Initiative—Improved Forest Management in Multiple-use Public Native Forest) Methodology Determination 2026 (***INFM Methodology Determination Explanatory Statement***).

[24] NSW Government, Environment and Heritage (above n 22).

the specified triage criteria and earlier method development and implementation experience;[25]

- Out of 39 expressions of interest, ERAC identified four methods for prioritisation which the Commonwealth agreed to on 30 October 2024. The INFM method was one of these four and is the first proponent-led method to have been developed;[26]
- The draft method was published in December 2025;[27]
- The ERAC undertook public consultation on the draft INFM Method from 2 to 30 January 2026.[28]

The ERAC concluded that the proposed INFM method is suitable to be made and expressed its satisfaction that the method meets the Offsets Integrity Standards.[29] However, the Chair of the ERAC observed that many submissions opposed the draft INFM method "and raised concerns about 3 key issues relating to the [Offsets Integrity Standards]", including "the additionality of abatement".[30]

Unfortunately, these concerns could not be scrutinised in this working paper because the ERAC failed to publish the submissions to the consultation until just before publication.[31] Section 123D(4) of the *Carbon Credits (Carbon Farming Initiative) Act 2011* (Cth) (the legislation establishing the ACCU Scheme) requires the ERAC to publish on the Department's website any submissions received during the consultation period. The provision does not specify a time within which submissions must be published, but well-established case law requires that in such situations the requirement must be fulfilled in a reasonable time.[32] The consultation period ended on 30 January 2026—more than six months before their eventual publication. Such a delay is in itself unreasonable for a perfunctory task such as posting submissions on a website, but it is all the more so given that the Method is currently tabled before Parliament. As Nicolette Boele MP argued in a letter to ERAC Chair Professor Karen Hussey requesting publication of the public submissions:

> The evident purpose of the transparency requirement in s123D(4) is to facilitate informed public and parliamentary debate about a proposed method. That purpose

[25] INFM Methodology Determination Explanatory Statement (above n 23).

[26] Ibid.

[27] DCCEEW (Cth), 'Have your say on the proposed Improved Native Forest Management in Multiple-use Public Native Forests (INFM) method' (no date) https://consult.dcceew.gov.au/improved-native-forest-management-method.

[28] Ibid.

[29] Letter from Professor Karen Hussey, ERAC Chair, to The Hon Josh Wilson MP, Assistant Minister for Climate Change and Energy (5 June 2026), available from DCCEEW (Cth) (above n 19).

[30] Ibid.

[31] DCCEEW (Cth) (above n 19) says "Submissions to ERAC's consultation will soon be published on our Have Your Say consultation hub" (apparently referring to reference 27, above).

[32] *Koon Wing Lau v Calwell* (1949) 80 CLR 533, 573–574; *Thornton v Repatriation Commission* (1981) 52 FLR 285, 292.

> is defeated if submissions remain unpublished while the Method is before the Parliament, and it would be particularly unreasonable for them to remain unpublished before the Senate votes on the disallowance motion.[33]

We can only infer that the Government did not want to have the legitimate concerns about the additionality requirements in the INFM Method, and about the additionality of the GKNP specifically, publicly aired and considered by the Parliament. In the absence of timely access to these submissions, the next section sets out my own opinion as to the additionality flaws in the INFM Method and the GKNP.

[33] Letter from Nicolette Boele MP to Prof Karen Hussey (10 July 2026) available from https://www.nicoletteboele.com.au/letters_and_submissions.

The additionality problem

A fundamental requirement of a proposed carbon credit project is that the carbon abatement caused by the project be 'additional' to what would have otherwise occurred in the ordinary course of events, i.e. absent the financial incentive that comes from the issuance of tradeable credits for that abatement. If the carbon abatement from a project would have occurred anyway, then the credits themselves are not inducing any change in climate-affecting behaviour; such projects have been called "anyway projects"[34] and the credits generated from them are known internationally as "hot air" credits.[35]

Determining what would have otherwise occurred is always complex and uncertain, since it requires speculating as to a counterfactual, which by definition cannot be observed.[36] This complexity and uncertainty invites manipulation, or 'gaming' the system, by sophisticated actors who can concoct convincing stories about 'what would have happened' and can delay undertaking abatement that they would have undertaken anyway to make it appear that the counterfactual did not involve the abatement.[37] The risk of manipulation is a fundamental weakness of all carbon credit schemes and militates against their use as climate policy instruments.[38] However, insofar as such schemes do exist, that risk makes it is all the more important that regulators clearly define additionality requirements and take a conservative approach to assessing additionality claims.

The ACCU Scheme has its own various additionality standards and the ERAC *purports* to apply a conservative approach to assessing methods in light of those standards, as explained below. Accordingly, one might wonder how the GKNP, having been unconditionally promised for over a decade, could be considered 'additional' on any common sense understanding of that concept, and therefore how the INFM Method could be considered to meet the Scheme's method-level additionality standard. After introducing the additionality hurdles under the ACCU Scheme, I will explain and critique the regulatory reverse-engineering undertaken in relation to the INFM Method to surmount these hurdles.

[34] Paul J Burke, 'Undermined by adverse selection: Australia's direct action abatement subsidies' (2016) 35(3) *Economic Papers* 216, 217.

[35] See, e.g., Michael Slezak and Team's Penny Timms, 'Many carbon credits for deforestation could be "nothing more than hot air", report finds', ABC News (21 September 2021) https://www.abc.net.au/news/2021-09-22/deforestation-carbon-emissions-credits-questioned-by-report/100479212.

[36] Joseph Romm, Stephen Lezak and Amna Alshamsi, 'Are Carbon Offsets Fixable?' (2025) 50 *Annual Review Environment and Resources* 649.

[37] Andrew Macintosh et al, 'Carbon credits are failing to help with climate change — here's why' (2025) 646 *Nature* 543; Romm, Lezak and Alshamsi, above n 36, 656–7; Burke, above n 34, 224.

[38] Burke, above n 34.

ADDITIONALITY UNDER THE ACCU SCHEME

Under the ACCU Scheme, additionality arises at two levels: the *method level* and the *project level*.

Method-level additionality standard

At the method level, the Minister cannot make a method unless satisfied that the method complies with the Offsets Integrity Standards,[39] or if the ERAC has advised the Minister that the method does not comply with one or more of those standards.[40] One of those standards is additionality: that the application of the method to particular projects "should result in carbon abatement that is unlikely to occur in the ordinary course of events …".[41]

The ERAC's own internally-developed guidance for interpreting and applying the Standards state that its general approach to the additionality standard is to apply two tests:

- "An activity test, which looks at whether the activities covered by the method would occur in the absence of the incentive provided by the scheme"; and
- "a baseline test, which looks at what the net emission outcomes would be if the activities were not undertaken".[42]

The Offsets Integrity Standards further require that, with respect to a method, any estimate, projection or assumption involved in determining the amount of net abatement that a project has achieved must be conservative.[43] The ERAC's own internally-developed guidance for interpreting and applying the Standards interprets this requirement broadly, "as requiring all estimates, projections and assumptions that *have an influence on* the calculation of the net abatement amount of eligible projects to be conservative."[44] Clearly, assumptions concerning additionality have an influence on the determination of a project's net abatement amount and on the way that abatement amount is calculated in a method.[45]

[39] *Carbon Credits (Carbon Farming Initiative) Act 2011* (Cth) s 106(4AA).

[40] Ibid s 106(4B).

[41] Ibid s 133(1)(a).

[42] ERAC, *Information Paper: Committee considerations for interpreting the Emissions Reduction Fund's offsets integrity standards* (version 2.0, March 2021) 6–7.

[43] *Carbon Credits (Carbon Farming Initiative) Act 2011* (Cth) s 133(1)(g).

[44] ERAC, above n 42, 16 (emphasis added).

[45] Strictly speaking, the conservativeness standard applies to those aspects of a methodology determination that provide a method for the calculation of net abatement *for an eligible offsets project*: *Carbon Credits (Carbon Farming Initiative) Act 2011* (Cth) ss 106(1)(c), 133(1)(g). Since project-level additionality is a condition precedent to the registration of an eligible offsets project (s 27(4)(d)), it could be argued that the 'conservativeness' standard does not apply to method- or project-level assumptions made about additionality. However, as is clear from the ERAC Information Paper quoted above (see above n 42 and preceding text), the ERAC itself interprets this conservativeness requirement more broadly. This approach to

The ERAC continues: "Conservative in this context means estimates, projects and assumptions that are cautious and likely to avoid the over-estimation of the abatement from projects taken under the method".[46] The ERAC is thus purportedly committed to making cautious assumptions about additionality when reviewing methods, with a view to avoiding the approval of methods that over-estimate the abatement from projects that apply that method.

Given that the GKNP had been promised for 11 years and was announced unconditionally as government policy, it is implausible to think that the activities covered by the INFM method—cessation of forest harvesting—would not likely have occurred in the ordinary course of events. It therefore should have failed the ERAC's own "activity test". The ERAC's judgement that the INFM Method passes that test clearly did not reflect a cautious, conservative approach aimed at avoiding over-crediting.

Project-level additionality requirements

At the project level, a proponent of an offsets project must meet certain additionality requirements set out in the Scheme rules in order to have their project registered as an eligible offsets project under the legislation establishing the ACCU Scheme.[47] The Scheme legislation sets out three default requirements:[48]

- ***newness requirement***: that the project has not begun to be implemented;
- ***regulatory additionality requirement***: that the project is not required to be carried out by or under a law of the Commonwealth, a State or a Territory;
- ***government program requirement***: that the project would be unlikely to be carried out under another Commonwealth, State or Territory government program or scheme in the absence of a declaration of the project as an eligible offsets project.

While these default requirements apply to projects, the ERAC's internal guidance confirms that the requirements are also relevant to the assessment of a proposed method.[49] This makes sense because the project-level additionality requirements inevitably influence any reasonable assessment of a method's conformity with the method-level additionality standard. It is in this sense that the following discussion of project-level additionality should be understood to be relevant to the analysis of the INFM Method.

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interpretation is also evident from the ERAC's discussion of the additionality standard in that same document, which states "In setting the baseline, there may be trade-offs between providing industry with certainty about the emissions counterfactual, accounting for uncertainty and changes in the counterfactual over time *and meeting the conservativeness standard*" (at 9, emphasis added).

[46] ERAC, above n 42, 16.

[47] *Carbon Credits (Carbon Farming Initiative) Act 2011* (Cth) s 27(4)(d).

[48] Ibid s 27(4A).

[49] ERAC, above n 42, 7.

The government program requirement

The legislation permits the Minister, via regulations, to specify an alternative to the government program requirement[50]—and the regulations in fact do so. Essentially, the regulations identify specific federal and state government programs that incentivise things (mainly to do with renewable energy, renewable water heaters, and energy efficiency) and specifies that these cannot form the basis of an ACCU project.[51] This approach to government program additionality is a very permissive way of interpreting government program additionality. Since none of the government programs listed in the regulations is relevant to protecting public forests from logging, projects applying the INFM Method would not violate this requirement.

However, with an apparent concern about the permissiveness of this requirement, the ERAC's own guidance again takes a more conservative approach:

> The Committee notes that the intent of the government program requirement is to rule out large-scale government programs that directly support activities that could also be eligible as ERF project activities. … *However, if the Committee is aware that an activity in a proposed method would be substantially funded by a government program that is not listed in the legislative rules, it may decide the method does not satisfy the additionality standard.* [52]

Given the NSW Labor Party's promises and commitments in government to establish the GKNP, this seems like a clear case in which "an activity in a proposed method would be substantially funded by a government program that is not listed in the legislative rules". Consequently, the ERAC should, by its own standards, have assessed that the GKNP fails to meet the government program requirement.

The newness and regulatory additionality requirements

The newness and regulatory additionality requirements are described above as 'default' because the Act also provides that a method may specify an alternative requirement(s) that is "expressed to be in lieu of" one or both of these default requirements.[53]

The INFM method substitutes alternative additionality arrangements that are expressed to be in lieu of both the newness and regulatory additionality requirements.[54] The substitute requirements are set out in their entirety in Appendix 2. In summary, the requirements:[55]

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[50] *Carbon Credits (Carbon Farming Initiative) Act 2011* (Cth) s 27(4A)(c)(ii).

[51] Carbon Credits (Carbon Farming Initiative) Rule 2015, rule 21.

[52] ERAC, above n 42, 7 (emphasis added).

[53] *Carbon Credits (Carbon Farming Initiative) Act 2011* (Cth) ss 27(4A)(a)(ii) and (b)(ii), 106(1).

[54] Carbon Credits (Carbon Farming Initiative—Improved Forest Management in Multiple-use Public Native Forests) Methodology Determination 2026 (Cth) s 10(1), (2), (5).

[55] Ibid s 10(1), (2).

- set out a *general* rule that an area of land <u>cannot</u> be included as a carbon protection area for an eligible offsets project if a state had already made a decision to stop timber harvesting in that area after 1 January 2000 (s 10(1)),
- <u>but go onto provide an exemption to that general requirement</u>, namely, where that decision to stop harvesting (s 10(2)):
  (a) “was an interim measure to enable an assessment of the suitability of all or any part of the area as a carbon protection area in an eligible offsets project or as a national park or other conservation reserve"; or
  (b) “was an interim measure taken on condition that an instrument be made that would allow the declaration of an eligible offsets project for stopping timber harvesting in the area".
- It then includes the following “note”: “An example of the exclusion mentioned in paragraph (b) is the temporary moratorium that was announced by the New South Wales government on 7 September 2025 in connection with the proposal to establish a koala national park in the North Coast region of New South Wales.”

The Explanatory Statement to the INFM Methodology Determination explicitly characterises section 10(2) as an “exemption”: “This exemption is intended to ensure State governments can assess areas for inclusion in a carbon protection area and stop harvesting in the proposed carbon protection area while the assessment is being undertaken without jeopardising its eligibility.”[56]

The INFM Method thus simultaneously creates a substitute additionality requirement for the default newness and regulatory additionality requirements and then immediately goes on to exempt the GKNP from that substitute requirement. The effect is that ACCUs generated by the GKNP do not need to demonstrate any regulatory or newness additionality—let alone to come from a project that a ‘cautious’ and ‘conservative’ person would reasonably think would not likely have already occurred in the ordinary course of events. Given the repeated promises to create the GKNP, it is highly significant that the Method effectively exempts the Park from additionality requirements. The INFM Method appears overtly designed to avoid the simple fact that the ACCUs generated from the GKNP would not be additional.

That there is a GKNP-sized hole in the additionality requirements of the INFM Method makes a mockery of the concept of additionality that is fundamental to carbon credit integrity generally and the Commonwealth Government’s own offset standards and policies. If the INFM Method is not disallowed, it is virtually inevitable that the GKNP will be registered as an eligible offsets project under the ACCU Scheme and will be able to generate large quantities of ACCUs for essentially implementing what was a repeated and unconditional election promise and Government commitment.

[56] INFM Methodology Determination Explanatory Statement.

This extraordinary state of affairs is apt to further undermine public, industry and international confidence in the sincerity and integrity of Australian climate policy. It also raises important questions about the process by which the INFM Method was made and the ability of the Act as currently drafted to require even the appearance of additionality.

ADDITIONALITY-RELATED QUESTIONS RAISED BY THE INFM METHOD

Was the INFM Method made in accordance with proper process?

When making a method, the ACCU Scheme legislation requires the Minister to have regard to (among other things) whether the method complies with the Offsets Integrity Standards.[57] As argued above, given the circumstances surrounding the GKNP, it seems implausible that the Minister could reasonably have concluded that the INFM Method complies with the additionality standard. However, the Minister must also have regard to any advice given by the ERAC concerning the method, which advice must include the Committee's opinion on whether the proposed method complies with the Offsets Integrity Standards.[58] Given that the ERAC advised that the INFM Method complies with the Standards,[59] and given the wide margin of discretion typically accorded ministerial decision-makers, the Minister's decision to make the INFM Method was probably lawful. Still, the Minister was required to bring his own independent judgement to this matter,[60] and questions can fairly be asked about the reasonableness of that judgement in this case.

Moreover, questions must be asked about the advice given by the ERAC concerning the INFM Method's compliance with the Offsets Integrity Standards. In her letter of advice to the Minister, ERAC Chair Professor Karen Hussey states, in relation to this issue (emphasis added):

> A particular focus for the Committee related to the 'in lieu of regulatory additionality' requirement, which enables project proponents to implement a temporary measure to stop harvesting for the purpose of assessing the feasibility of registering a project under the method. Feedback received through the Committee's consultation process revealed concern about the additionality of such a measure, particularly given the NSW Government's pre-election commitment to establish a koala national park in the North Coast region of NSW. *The Committee examined the merits of these*

[57] *Carbon Credits (Carbon Farming Initiative) Act 2011* (Cth) s 106(4)(a).
[58] Ibid ss 106(4)(b), 123A(1)(a), (2), (3), (5)(a).
[59] Letter from Professor Hussey (above n 29).
[60] *Carbon Credits (Carbon Farming Initiative) Act 2011* (Cth) s 106(4)(a), (4AA).

> *concerns and ultimately deemed it reasonable for a state government to pursue an ACCU Scheme project to provide the means to deliver an election commitment, and furthermore, that a well-designed method would enhance the commitment's longevity*. The Committee also considers it appropriate for a state government to introduce a temporary moratorium to undertake a feasibility study for a project that will take place on publicly owned lands and affect local industries and communities. Accordingly, the Committee was satisfied that any emissions reductions or removals associated with a project subsequently registered in the region could be considered additional under the method.[61]

From this paragraph, it is apparent that the ERAC has not performed its task of assessing whether projects implementing the method under consideration would lead to additional abatement—let alone done so on the basis of conservative assumptions, in accordance with its own internal guidelines.[62] Rather, the ERAC has instead engaged in an assessment of whether it is "reasonable for a state government to pursue an ACCU Scheme project to provide the means to deliver an election commitment". This is essentially a political judgement of a kind ill-suited to an expert body charged with advising the Minister about the integrity of methods for carbon offset projects. It is therefore questionable whether additionality, in the sense intended by the Act and by the Committee's own guidelines, has in fact been adequately considered by the ERAC in carrying out its statutory functions. This is matter of particular public importance given that these functions included advising the Minister about whether to make the INFM Method (which the Minister indeed went on to do, having regard to the ERAC's advice).

Is the Act fit for purpose?

The INFM Method demonstrates that the *Carbon Credits (Carbon Farming Initiative) Act 2011* (Cth) enables the Minister to make a method that effectively dispenses with the default project-level additionality standards enshrined in the Act. This raises important questions about whether the Act is fit for purpose.

As discussed above, the Act empowers the Minister to substitute the default newness and/or regulatory additionality requirements in the Act with an alternative additionality requirement(s) in a method. That power is extremely broadly framed because it allows a method to substitute in "one or more requirements that are *expressed to be* in lieu of" the relevant default requirement(s).[63] In other words, the Act appears to enable the Minister, via a method, to unilaterally substitute alternatives to the newness and/or regulatory additionality requirements *regardless of whether the alternative requirements actually*

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[61] Letter from Professor Hussey (above n 29, emphasis added).

[62] See above notes 43–46 and surrounding text.

[63] *Carbon Credits (Carbon Farming Initiative) Act 2011* (Cth) s 27(4A)(a)(ii) and (b)(ii) (emphasis added).

specify any rigorous additionality test that achieves the Act's own objectives (which include to "increase carbon abatement"[64]) or meets the Offsets Integrity Standards. The provision is in the nature of a 'Henry VIII clause'—a legislative provision empowering the executive to make a statutory instrument that amends its parent statute—so named because of that monarch's autocratic tendencies. Such provisions raise separation of powers concerns and therefore warrant particular Parliamentary scrutiny.[65]

The INFM Method demonstrates the Albanese Government's willingness to use this wide-ranging power to dispense with the Act's additionality requirements. While section 10(1) of the INFM Method does specify a genuine alternative additionality requirement, section 10(2), as explained, effectively exempts states from that additionality requirement in circumstances precisely tailored to the moratorium on logging associated with the NSW Government's 7 September 2025 GKNP announcement. It follows that a state proposing a project the circumstances of which fit section 10(2) is not subject to *any* additionality requirement in lieu of the default newness and regulatory additionality requirements.

The above concerns, it must be noted, are far from the only additionality-related concerns that experts have raised about the ACCU Scheme (including the Act itself, particular methods made under it, and decisions by the Clean Energy Regulator that apply those methods to particular projects).[66] My point is that by lawfully exempting certain projects from additionality requirements when making the INFM Method, the Commonwealth Government has shown that it is legally possible to do away with even the *appearance* of additionality, illustrating a problem in the way the Act is drafted that may be under-appreciated. While a legislative amendment may be able to avoid *this* problem, it will not address the more fundamental problems concerning the dubious additionality of many ACCU projects that others have long raised.

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[64] Ibid s 3(4).

[65] See, e.g., Senate Standing Committee for the Scrutiny of Bills, *The Work of the Committee during the 40th Parliament February 2002 – August 2004* (18 June 2008) [5.4]–[5.7].

[66] For an overview of these concerns, see especially Andrew Macintosh et al, 'Implications of the Independent Review of Australian Carbon Credit Units (ACCUs) and Low-Integrity ACCUs for Australia's Safeguard Mechanism', Australian National University (2023); Burke, above n 34.

The permanence problem

When fossil fuels are extracted and burned, a large fraction of the CO_2 produced lasts in the atmosphere for thousands of years of years.[67] For a carbon credit to be of high integrity—and certainly for it to be used as a carbon offset for actual emissions—it must remove and store carbon for the same amount of time.[68]

However, carbon stored in trees or soils—often referred to as 'land-based carbon sinks'—at best remains stored for around 100 years (and often less) before it is released back into the atmosphere.[69] Indeed, the INFM Method—as is common in vegetation-related ACCU methods—only requires that the relevant forests be protected for 100 years. Land based offsets, such as those that would be generated under the INFM Method by projects such as the GKNP, are therefore fundamentally incapable of undoing the harm to the climate system caused by extracting and burning fossil fuels.[70] Consequently, "offsetting the effectively permanent consequences of CO_2 with temporary carbon storage necessarily leads to higher temperatures at the end of the temporary carbon storage period".[71]

This fundamental temporal mismatch between purported offsets and industrial emissions was acknowledged by EnergyAustralia in a public statement it made as part of a settlement agreement with Parents for Climate, an advocacy group that sued EnergyAustralia for alleged misleading and deceptive conduct in claiming that its Go Neutral gas and electricity products were carbon neutral in virtue of relying on offsets:

> … offsets do not prevent or undo the harms caused by burning fossil fuels for a customer's energy use. Even with carbon offsetting, the emissions released from burning fossil fuels for a customer's energy use still contribute to climate change. …
>
> Some carbon offsets claim to remove carbon dioxide from the atmosphere by planting trees or forest regeneration. However, EnergyAustralia today accepts the

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[67] David Archer et al, 'Atmospheric lifetime of fossil fuel carbon dioxide' (2009) 37 *Annual Review of Earth and Planetary Sciences* 117.

[68] Danny Cullenward, Grayson Badgley and Freya Chay, 'Carbon offsets are incompatible with the Paris Agreement' (2023) 6(9) *One Earth* 1085; Myles R Allen et al, 'Geological Net Zero and the need for disaggregated accounting for carbon sinks' (2025) *638*(8050) *Nature* 343.

[69] Brendan Mackey et al, 'Untangling the confusion around land carbon science and climate change mitigation policy' (2013) 3(6) *Nature Climate Change* 552.

[70] Kate Dooley, 'Net-Zero Climate Goals and the Role of Land-Use', in D. J. Fiorino, T. A. Eisenstadt and M. Kaur Ahluwalia (Eds), *Elgar Encyclopedia of Climate Policy* (Edward Elgar Publishing, 2024) 302–305; Barbara K Haya et al, 'Comprehensive review of carbon quantification by improved forest management offset protocols' (2023) 6 *Frontiers in Forests and Global Change* 958879; Cullenward, Badgley and Chay, above n 68.

[71] Cullenward, Badgley and Chay, above n 68, 1086, citing Miko U F Kirschbaum, 'Temporary carbon sequestration cannot prevent climate change' (2006) 11(5–6) *Mitigation and Adaptation Strategies for Global Change* 1151.

> scientific consensus that these “offsets” do not indefinitely remove greenhouse gas emissions from burning fossil fuels, because carbon is stored in plants for a substantially shorter time than those emissions remain in the atmosphere. Storing carbon in plants is not equivalent to keeping it stored in fossil fuels (by not burning those fossil fuels in the first place).[72]

This fundamental mismatch is not unique to the INFM Method; it is shared by all of the land-based carbon sink methods in the ACCU Scheme. But the fact that the Method is in bad company makes it no less bad.

[72] EnergyAustralia settlement statement, available from https://equitygenerationlawyers.com/case/ap4ca-v-energyaustralia/.

How the INFM Method and GKNP enable fossil fuel emissions and worsen climate change

The overwhelming source of demand for ACCUs in Australia is from companies regulated by the Commonwealth Government's Safeguard Mechanism. The Safeguard Mechanism is the Commonwealth Government's flagship climate policy for regulating large industrial emitters outside the electricity sector, including sectors such as mining, gas production and metals manufacturing. It applies to facilities that emit more than 100,000 tonnes of carbon dioxide equivalent (**CO_2e**) per year. Each such facility is allocated a 'baseline' level of emissions each year according to a formula specified in the Scheme rules. If a Safeguard facility emits more than its baseline in a year, then the operator of the facility is legally entitled to use ACCUs to bring its 'net' emissions back down to the baseline in lieu of undertaking on-site activities to decarbonise its operations. Effectively, operators of Safeguard facilities can use an unlimited amount of carbon credits to purportedly 'offset' their above-baseline emissions (Australia being one of only a small handful of jurisdictions, including Kazakhstan, that allows unlimited use of offsets for compliance in its carbon market[73]).

ACCUs are cheap because so many of them are poor quality.[74] The ability of an operator of a Safeguard facility to use unlimited ACCUs to bring its facility's 'net' emissions within its baseline, combined with the fact that ACCUs are cheap, effectively blunts the incentive to undertake onsite decarbonisation at Safeguard facilities.[75] For example, BHP recently abandoned plans to replace the diesel haulage trucks used in its Pilbara iron ore mines for electric trucks as it was cheaper to meet its obligations under the Safeguard Mechanism by buying ACCUs.[76]

However, because vegetation-based carbon removal ACCUs are inherently temporary, and the GKNP cannot on any sensible definition of additionality be considered 'additional', the effect of using ACCUs generated under the INFM Method will be that greenhouse gas emissions from industrial polluters causes harm to the climate system while, at best, only a

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[73] Fergus Green and Frances Medlock, 'Safeguarding the Fossil Fuel Industry? How Carbon Offsetting Undermines the Safeguard Mechanism', The Australia Institute (June 2026) https://australiainstitute.org.au/report/safeguarding-the-fossil-fuel-industry/

[74] Ibid.

[75] Ibid.

[76] Christopher Knaus and Adam Morton, 'World's biggest miner BHP backtracks on climate action with key projects put on ice, leaked documents reveal', *The Guardian* (25 May 2026) https://www.theguardian.com/world/2026/may/25/bhp-files-leak-mining-company-climate-action.

small fraction of it will be offset through temporary carbon storage in public native forests (which likely would have happened anyway).

These concerns apply equally no matter which types of Safeguard facilities use the ACCUs generated under the method as offsets—be it coal mines, liquefied gas production facilities, aluminium smelters, cement makers, landfills, airlines or any others.

Absent intervention by the NSW Government, the ACCUs generated from the GKNP would themselves in all likelihood come to be used by fossil fuel companies. This is because fossil fuel facilities (mostly gas production/processing and coal mining facilities) are responsible for the majority of the emissions regulated by the Safeguard Mechanism and are the biggest users of ACCUs, having used around two-thirds of all ACCUs used for compliance purposes during the two years of the Albanese Government's reformed Safeguard Mechanism for which data are available (FY2023–45 and FY2024–25).[77]

Furthermore, the increase in NSW-originated ACCUs resulting from the GKNP (if it is to be registered under the ACCU Scheme) will facilitate the expansion of coal production in NSW. There are currently 20 proposed coalmine expansions in the NSW planning assessment process.[78] NSW Government policy indicates a preference for proponents of coal mine expansions to source NSW-originated ACCUs to 'offset' the residual emissions from their operations.[79] The GKNP will lead to a large increase in NSW-originated offsets. According to research commissioned by the Australian Climate and Biodiversity Foundation (**ACBF**, which supports the INFM Method) and undertaken by consultancy Mandala, the Method could generate 1.5 million ACCUs per year over 15 years in NSW, i.e. 22.5 million tonnes of CO_2e worth of ACCUs.[80] This would be almost twice as many NSW-based ACCUs as would be

[77] Author calculations based on Clean Energy Regulator, 2023–24 baselines and emissions data (2026) available at https://cer.gov.au/markets/reports-and-data/safeguard-data/2023-24-baselines-and-emissions-data; Clean Energy Regulator, 2024–25 baselines and emissions data (2026) available at https://cer.gov.au/markets/reports-and-data/safeguard-data/2024-25-baselines-and-emissions-data; Clean Energy Regulator, *2023–24 safeguard data insights* (2024); Clean Energy Regulator, *2024–25 Safeguard Mechanism data insights* (2026).

[78] Bridget Murphy, 'Net Zero Commission says NSW unlikely to meet emissions reduction targets', *ABC News* (23 July 2026) https://www.abc.net.au/news/2026-07-23/net-zero-authority-nsw-annual-report-coal-data-impacts/106948568.

[79] Environment Protection Authority [NSW], *NSW Guide for Large Emitters: Guidance on how to prepare a greenhouse gas assessment as part of NSW environmental planning processes* (January 2025) 36; NSW Government, *NSW Coal Industry 2026–50* (March 2026) 16.

[80] I have only seen a summary of the Mandala modelling provided by Forest Futures (an initiative of ACBF): *Report Summary: Implementing High Integrity Forest Carbon Projects in NSW – Costs, returns, and income reinvestment scenarios*. This estimate encompasses policies to end logging across all public native forests in NSW (i.e. not just the GKNP); the report summary does not provide a specific estimate of the number of ACCUs to be generated by the GKNP alone.

needed to offset the entire direct (scope 1) emissions of the largest proposed coal expansion in NSW.[81]

In an intriguing development, the NSW Government has recently said that "ACCUs from the [GKNP] will not be able to be sold to coal and gas projects".[82] But while such a commitment would be highly significant if implemented at the federal level and applied to the entire ACCU Scheme, as a mere promise by a single actor in the ACCU market it does not mitigate any of the above criticisms.

The commitment is not legally enshrined and therefore it is unenforceable and not capable of binding future governments. But even if the NSW Government were able to control the ultimate destination of the ACCUs it generates from the GKNP and ensure that they do not end up being used by fossil fuel companies[83] the climate outcomes would be just as bad as if they did end up in the hands of fossil fuel companies. This can be understood from both a quantity perspective and a price perspective.

First, with respect to quantity, a tonne of CO_2 emitted from a Qantas jet or a diesel-powered truck used by BHP to mine iron ore in the Pilbara is just as harmful to the climate as a tonne of CO_2 emitted from a gas processing facility operated by Woodside—and the GKNP-generated ACCU is just as incapable of undoing the resultant climate harm no matter which of these companies uses it. Similarly, focusing on the NSW coal sector, if the NSW Government refrains from selling GKNP-associated ACCUs to coal companies proposing NSW coal expansions and instead sells them to other NSW large emitters, that frees up other NSW-originated ACCUs to be bought by those coal companies.

Second, from a price perspective, even where ACCUs are not directly purchased and used for compliance by fossil fuel companies, expanding the supply of ACCUs lowers the price of ACCUs for all buyers, and therefore lowers the cost of compliance with the Safeguard Mechanism (effectively a carbon price on above-baseline emissions) for all entities with

[81] The Hunter Valley Operations coal mine expansion proposal will generate around 795,000 tonnes of CO_2e in direct (scope 1) emissions each year over the next 15 years (11.9 Mt CO_2e in total): Department of Planning, Housing and Infrastructure [NSW], *Hunter Valley Operations Continuation Project State Significant Development Assessment Report (SSD11826681 and SSD11826621)* (June 2026) Table 8.

[82] Penny Sharpe, 'Media Statement: ACCUs Policy for The Great Koala National Park' (28 July 2026).

[83] ACCUs are intangible property, tradeable on carbon markets. Consequently, even if the NSW Government only sold its ACCUs to companies outside the fossil fuel sector, a standard ACCU sale agreement would not preclude the buyer from on-selling the ACCUs to a fossil fuel company. The only way the Government could control the ultimate destination of its ACCUs is through a term in its contract of sale requiring the buyer to (i) not on-sell the ACCUs to the operator of a coal or gas project and (ii) include an equivalent term in any contract of sale for those ACCUs that it agrees with any third party buyers. This restraint of trade would presumably mean those ACCUs attract a discount relative to the market price, meaning the NSW Government would have to revise down its forecast revenue from GKNP ACCUs.

liabilities under the scheme, further blunting the Mechanism’s (already-weak) incentive for on-site decarbonisation.[84]

Far from solving the problems associated with turning the GKNP into an offsets project, the NSW Government’s promise not to sell GKNP-derived ACCUs to operators of coal or gas projects raises questions of public policy that go to the heart of Australia’s and NSW’s climate policy, both of which—contrary to the best available science[85]—rely heavily on offsets to reduce so-called ‘net emissions’: what reason could the Government provide for such a concession that does not impugn the integrity of those ACCUs? And, on pain of inconsistency, why would any such reason not apply with equal force to justify precluding the sale of ACCUs to large emitters *outside* the fossil fuel industry?

[84] See generally Green and Medlock, above n 73.

[85] Romm, Lezak and Alshamsi, above n 36; Macintosh et al, above n 37; Cullenward, Badgley and Chay, above n 68; Allen et al, above n 68.

A fundamental concern about the direction of Australian climate policy

Perhaps the most concerning thing about this INFM Method is the precedent that would be established if the Parliament allowed it to stand: will a cash-strapped state or territory government ever again unilaterally undertake a climate mitigation policy measure unless and until they can identify a method—or create a new one—that will enable them to leverage that measure to generate financially valuable carbon credits via the Commonwealth's ACCU scheme?

Working out what would have happened "in the ordinary course of events"—as required by the additionality standard in the Offsets Integrity Standards—is hard enough for offset projects undertaken by private operators, where government policy can reasonably be treated as exogenous. As Andrew Macintosh and colleagues have argued:

> The hypothetical nature of such calculations invites manipulation and can tempt project developers to overestimate business-as-usual emissions to generate more credits. Fundamental imbalances in the information used in offset schemes leave them vulnerable to these outcomes. In most cases, only project leaders and developers know whether their projects are dependent on credit revenues and are therefore truly additional. This makes it difficult for administrators to screen out shoddy projects.[86]

The idea that such counterfactual reasoning be brought to bear on a *state government policy process* is even more problematic because government policy is the product of democratic and other forces that are difficult to predict in advance and that become more and more difficult to predict the further into the future one looks.[87] This makes the kinds of additionality judgements at stake in the INFM Method even more complex, uncertain, and thus 'gameable'—especially by highly sophisticated state governments with extensive resources at their disposal.

In the case of the INFM Method, an executive committee (the ERAC) has made a judgement that the Method will result in decisions to stop logging that would not likely have happened

[86] Macintosh et al, above n 37, 544.

[87] The distant future is highly relevant to climate change policy: many ACCU methodologies require projects to be established for 100 years (including the INFM Method), and the emissions that such projects purport to offset have atmospheric effects for thousands of years.

anyway.[88] Given the circumstances surrounding the GKNP, this involved a highly controversial judgement that is closer to political discretion than expert judgement, as discussed above.[89] But if the INFM Method is allowed to proceed, it will set a precedent that will have political effects far beyond that project, and even that method. For one thing, it is highly unlikely that a future state government would ever again unilaterally protect native public forests, since they could always claim they wouldn't have done so without the INFM Method (under the ACCU Scheme, they wouldn't even need to make this claim, given the laxity of the INFM Method's additionality requirements). And if their circumstances didn't fit the Method, they always have the option of developing a new one that does.

In fact, the INFM Method raises the spectre that just about *any* state government climate policy might be delayed until the state can engineer a new method by which the federal government could grant it ACCUs for enacting that policy. Paul Burke observed a decade ago that project-based subsidy schemes like the ACCU Scheme "risk instilling a culture of subsidies and Government involvement in project selection".[90] This risk now clearly extends to the nature of Commonwealth Government involvement in state environmental and climate policy.

It is true that Commonwealth and state governments are often involved in debates over 'financial additionality'. For example, imagine the NSW Government says it will invest $1 billion in building a new wind farm, but only if the Commonwealth matches that funding. It's hard to know if the NSW Government would have built the wind farm anyway, and hence whether the Commonwealth funding was 'additional'. However, the stakes are much higher, and the governance issues far more important, when the additionality question affects not merely whether a project would have been undertaken anyway, but whether a Commonwealth-issued carbon credit is in fact capable of offsetting the harm to the climate system caused by an actual tonne of carbon dioxide (or the equivalent amount of another greenhouse gas). While it is possible for money to be wasted in all Commonwealth-state negotiations about what 'might have been the case', the consequences of 'over-crediting' of ACCUs are far more significant, and irreversible.

The governance and accountability arrangements in the two cases also differ. The fact that the hypothetical wind farm funding may entail a reduction in Commonwealth investment in some other state provides an added layer of accountability in that case, since other states have a strong incentive to scrutinise the funding. But in the ACCU case, there is no financial cost to the Commonwealth in issuing more ACCUs and no other states 'miss out' on scarce Commonwealth funding as result of the Commonwealth's generosity. There is also a distinct lack of transparency or accountability when it comes to the 'generosity' of the Commonwealth's granting of credits to the NSW Government (beyond the Parliament's

[88] Letter from Professor Hussey (above n 29).

[89] See above n 61 and surrounding text.

[90] Burke, above n 34, 224.

oversight of new ACCU methods). This lack of oversight matters because, as Andrew Macintosh and Don Butler have argued, “regulators also have an incentive to increase the supply of credits, even if it risks reducing integrity”. This is because “low credit supply is taken as a sign of scheme failure” whereas “[l]iquid markets built on a healthy supply of credits (regardless of quality) make regulators look good and keep emitters and politicians happy.”[91]

State environmental and climate policy is simply too important to be coopted by the incentives of the ACCU scheme into the endless game of carbon offset—and hence fossil fuel—expansion.

[91] Andrew Macintosh and Don Butler, ‘The unsafe Safeguard Mechanism: how carbon credits could blow up Australia’s main climate policy’, *The Conversation* (10 November 2023) https://theconversation.com/the-unsafe-safeguard-mechanism-how-carbon-credits-could-blow-up-australias-main-climate-policy-213874.

Conclusion

Whichever way you look at it, the INFM Method will facilitate greater fossil fuel emissions without generating additional, permanent carbon removal to offset the harm to the climate system caused by those emissions. Consequently, parliamentarians and, by extension, Australian citizens, are being asked to choose between protecting koalas and generating even more climate change that threatens the climatic conditions for our—and the koalas'—safety and survival.

Supporters of the Method claim, effectively, that There Is No Alternative; that the only way to finance the transition away from native forest logging is to use money from big industrial polluters who want a cheap means of complying with their Safeguard Mechanism obligations.

This is ludicrous. Australia is one of the richest countries in the world and collects among the lowest tax in the OECD.[92] There is no reason we cannot decarbonise rapidly *and* store carbon in trees *and* protect koala habitat through a combination of better regulation and stronger enforcement of existing laws. If federal and state governments need to raise more tax revenue to do this, then they could start by cutting the $16.3 billion wasted every year on climate-harming fossil fuel subsidies[93]—to say nothing of the money spent subsidising native forest logging—and stop giving half our gas away for free.[94]

The upcoming debate over the INFM Method provides an important opportunity to draw a line; to stop holding environmental and climate policy hostage to the ceaseless expansion of Australia's fossil fuel industry. The Senate should vote to disallow the INFM Method.

[92] The Australia Institute, 'Australia is a low-tax country' (12 December 2024) https://australiainstitute.org.au/post/australia-is-a-low-tax-country-3/.

[93] Matt Grudnoff and Rod Campbell, 'Fossil fuel subsidies in Australia 2026', The Australia Institute (12 March 2026) https://australiainstitute.org.au/report/fossil-fuel-subsidies-in-australia-2026/.

[94] Mark Ogge, Rod Campbell and Piers Verstegen, 'Australia's great gas giveaway. The Australia Institute (July 2024) https://australiainstitute.org.au/report/australias-great-gas-giveaway/.

Appendix 1: testimony by Premier Minns at October 2023 budget estimate hearing

The following are the two relevant exchanges between Sue Higginson, MLC (Greens) and Premier Minns during a NSW state budget estimates hearing on 25 October 2023, referred to in footnote 17, above:[95]

> **Ms SUE HIGGINSON**: So many questions, so little time. We are in a climate emergency, as we know. We are sitting on a colossal wealth of carbon savings, ecosystems services that benefit agricultural productivity, food security, climate impact stabilisation and the rest. It's called the public forest estate. At the moment, we are still logging it and it's costing taxpayers millions of dollars every year, not even including the subsidies: a $28 million loss over the last two years and $80 million in subsidies the previous year. We've seen report after report mounting in terms of the cost savings to the State. The carbon savings are unbelievably profitable. It's just waiting, Premier, for a leader to come along and make the decision and take us in the right direction. Are you going to do it?
>
> **Mr CHRIS MINNS**: Good question. I know you are passionate about this issue. There are many industries and many companies and governments around the world that are desperate for carbon offsets and would be looking at jurisdictions like New South Wales in relation to that. You have to have the system up and running before you can quarantine a park or an area to allow for that area or that zone to be eligible for the carbon transfer. If you do it in reverse, then you can't retroactively go to that national park or that forest and say, "This will now apply to carbon offsets in the future." We are, in some ways, relying on the Commonwealth Government to get to the table to have a trading scheme up and running that can be applicable in the New South Wales economy.
>
> **Ms SUE HIGGINSON**: Premier, can I interrupt? That's very helpful. In terms of our own budget and New South Wales, not necessarily thinking of the forest as a carbon trade dump, but for you, Premier, as fiscally responsible for our budget and the carbon savings, we are looking at a minimum of $2.7 billion between now and 2050 and that's looking at carbon as a cost of $35 a tonne right now. We know that Transport for NSW priced carbon as double that two years ago. We are losing money, Premier, but not just that; we are really harming communities and the environment. Will you commit to really looking closely at the genuine economics and even doing your own independent economic assessment? We've got four reports dumped on the table over the past two years begging for this work to be done. Will your Government commit to doing this work?
>
> **Mr CHRIS MINNS**: Obviously, we want to work with the Commonwealth in relation to this. I don't have an announcement to make today in relation to your policy prescription. We're looking at all of those initiatives really closely. I don't have a reticence about it but it's really important to note that there needs to be an established market that is independently audited, if you like, that companies and governments around the world have confidence—
>
> **Ms SUE HIGGINSON**: But what about your budget?

[95] See Transcript of *Portfolio Committee No. 1* (above n 17) 34, 45.

Mr CHRIS MINNS: I've got to get this out.

Ms SUE HIGGINSON: What about your budget? Not a market—our budget? New South Wales?

Mr CHRIS MINNS: Unless there's an internationally recognised trading marketplace that's established, then we would potentially miss out on billions of dollars' worth of investment.

…

Ms SUE HIGGINSON: A lot of young people, climate advocacy organisations and science people are really holding enormous hope for that interim target—and, in fact, more ambitious targets. It would be great if you could take that on notice. If I can go back to forests, I am really concerned, Premier, that in December last year the Natural Resources Commission—your own independent advisory body on forest health and science— tabled a report that said that if we carry on managing our public forest estate the way we are, it's literally going to become a carbon emitter to New South Wales and we will run the workers and the industry off the cliff. We need to take an honest, earnest new look at the forest estate. We are talking about 1.8 million hectares. It's a very small amount of New South Wales but a very significant amount. There is a mountain of documents that keep piling up, begging us to look at this with fresh eyes. Premier, will you do that? Will you make a commitment to at least look at what we're doing with that public forest estate, what we've done over the past 200 years and what we might need to do for all of New South Wales moving forward?

Mr CHRIS MINNS: Obviously we will approach all of these issues with an open eye and look at all potential initiatives. You could say that without fear of contradiction. We did make a decision on 12 September in relation to 106 koala hubs where 42 per cent of the sightings for that protected species had been undertaken and that amounted to, I think, about 8,500 hectares-worth of land on the mid-North Coast of New South Wales.

Ms SUE HIGGINSON: I commend you for that decision by the way, thank you.

Mr CHRIS MINNS: Yes, and I think that was the right decision. Part of the dilemma that we have, as has been explained to me, is that obviously these timber agreements between government agencies and mills across New South Wales were entered into by the previous Government, but at the same, time logging to meet those agreements between those agencies and mills was effectively halted in the run-up to the election campaign. So we were met, having assumed office, with a whole bunch of pre-agreed commercial arrangements between the Government and milling operators in New South Wales, which is a regrettable situation and part of the reason why we made that decision on 12 September.

Ms SUE HIGGINSON: Premier, can I put it to you that those agreements literally could be bought out any day and actually, again, the cost benefit analysis of that has been done. It's in these reports that I'm asking you to have an open mind about, have a good look at and commission your own work if you think that's required. But the case to do this economically, environmentally, socially and politically has been made, so will you please commit to look at it?

Mr CHRIS MINNS: Again, I appreciate your passion and your commitment to this issue and we did make these decisions on 12 September, and of course we will approach all of these issues with an open mind.

Appendix 2: key section of the INFM methodology determination (substitute additionality requirements)

10 No previous law or decision to stop timber harvesting in carbon protection area

(1) An area of land cannot be included as a carbon protection area for an eligible offsets project if, at any time between 1 January 2000 and the date the project is declared as an eligible offsets project:

(a) a law of the Commonwealth or the relevant State stopped timber harvesting in the area (even if the law has since been repealed or amended to remove that prohibition); or
(b) the government of the relevant State decided to stop timber harvesting in the area (even if the decision has since been changed to remove that prohibition or the decision was scheduled to take effect after the date this instrument commences).

(2) Subsection (1) does not apply if the stopping of timber harvesting in the area of land:

(a) was an interim measure to enable an assessment of the suitability of all or any part of the area as a carbon protection area in an eligible offsets project or as a national park or other conservation reserve; or
(b) was an interim measure taken on condition that an instrument be made that would allow the declaration of an eligible offsets project for stopping timber harvesting in the area.

Note: An example of the exclusion mentioned in paragraph (b) is the temporary moratorium that was announced by the New South Wales government on 7 September 2025 in connection with the proposal to establish a koala national park in the North Coast region of New South Wales.

(3) Paragraph (1)(b) does not apply to a decision of the government of a relevant State to stop timber harvesting in the area if the decision was made in connection with an application for the declaration of an eligible offsets project that includes the area as a proposed carbon protection area and on condition that the project be declared as an eligible offsets project.

…

(5) The requirements of this section are, for the purposes of subparagraphs 27(4A)(a)(ii) and (b)(ii) of the Act, declared to be requirements made in lieu of the newness and regulatory additionality requirements.