

Table of Contents

<i>Jurisdiction – ADJR</i>	<i>3</i>
<i>Jurisdiction – CL.....</i>	<i>3</i>
<i>Standing</i>	<i>5</i>
<i>Reasons</i>	<i>7</i>
<i>GOR.....</i>	<i>8</i>
<i>Simple Ultra Vires</i>	<i>8</i>
<i>Procedural UV.....</i>	<i>12</i>
<i>Improper delegation</i>	<i>15</i>
<i>Relevant Considerations.....</i>	<i>16</i>
<i>Irrelevant Considerations</i>	<i>18</i>
<i>Improper purpose.....</i>	<i>20</i>
<i>Bad faith.....</i>	<i>21</i>
<i>Fraud</i>	<i>21</i>
<i>Unreasonableness.....</i>	<i>22</i>
<i>No evidence – CL</i>	<i>23</i>
<i>No evidence – ADJR.....</i>	<i>24</i>
<i>Jurisdictional fact (CL only)</i>	<i>25</i>
<i>Inflexible application of policy</i>	<i>26</i>
<i>Acting under dictation.....</i>	<i>27</i>
<i>Hearing rule</i>	<i>28</i>
<i>Rule against bias.....</i>	<i>31</i>
<i>Jurisdictional error (CL only)</i>	<i>35</i>
<i>Remedies</i>	<i>35</i>
<i>Privative clauses</i>	<i>37</i>
<i>Merits Review.....</i>	<i>40</i>
<i>Template (I) – revoke declaration</i>	<i>44</i>
<i>Merits review.....</i>	<i>44</i>
<i>Preliminary issues (ADJR JR)</i>	<i>45</i>
<i>Simple UV</i>	<i>45</i>

Procedural UV	46
Improper delegation.....	46
Relevant considerations	47
Irrelevant considerations.....	48
Improper purpose	48
Bad faith	49
Unreasonableness	49
No evidence - ADJR	50
Inflexible application policy	50
Acting under dictation	51
Hearing rule	51
Bias rule.....	52
Remedies (ADJR)	53
Preliminary issues (CL JR).....	53
Jurisdictional fact – CL only.....	53
No evidence – CL	54
Jurisdictional errors + remedies	54
Privative clauses.....	55
<i>Template (II) – refuse declaration application</i>	<i>57</i>
Merits review.....	57
Preliminary issues (ADJR JR)	57
Simple UV	57
Procedural UV	58
Hearing rule	58
Bias rule.....	59
Preliminary issues (CL JR).....	60

Jurisdiction – ADJR

Since *Carbon Credits (Carbon Farming Initiative) Act 2011* is not excluded under sch 1 ADJR (s 3(1) ADJR), the Federal Court and Federal Circuit and Family Court can review ‘decision’ that is ‘of an administrative character made under an enactment’ (s 3(1) ADJR).

This decision is not ‘a decision by the Governor-General’ (s 3(c) definition of ‘decision to which this Act applies’)

Decision includes a decision made by a delegate (s 3(8) ADJR).

Decision

[DM]’s decision to revoke the declaration is a ‘decision’ within the ADJR context (s 3(2)(c) ADJR). The decision is reviewable because it is ‘one for which provision is made under’ s 36 CCCFITA (*Bond*) and is ‘final’, ‘operative’ and ‘substantive’ in nature (*Bond*).

Report or recommendation

S 3(3) ADJR defines ‘decision’ to include a report or recommendation that CCCFIA mandates to be made before the decision is made.

Stepping stone decision

S 3(3) ADJR defines ‘decision’ to include a report or recommendation that CCCFIA mandates to be made before the decision is finalised.

Determining whether a person is fit and proper is explicitly mandated by CCCFIA before the final decision, making it an amenable decision under ADJR.

Administrative Character

The decision involves applying s 36 CCCFIA. It does not involve any public consultation or parliamentary oversight, and merits review is available (item 6, s 260 CCCFITA). Since the decision is not of ‘legislative’ or ‘judicial’, it is likely to be administrative (*Tang*).

Under an Enactment

The decision was expressly authorised by CCCFITA and it [confers, alter or otherwise affect [client]’s legal rights or obligation to carry out offsets project, *Tang* test is satisfied. Thus, the decision was ‘made under an enactment’ (s 3(1) ADJR).

On balance, the Court has jurisdiction under ADJR to hear [client]’s application.

Jurisdiction – CL

Justiciable matter

The dispute about a decision to revoke the declaration is not 'hypothetical' (*McBain*). It is a 'real and immediate' controversy about their rights to carry out export activities (*McBain*). The decision does not involve a 'complex policy question' (*Peko*). Therefore, the decision is justiciable.

Remedies

[Client] can seek certiorari to quash the decision and mandamus to compel [DM] to remake their decisions in accordance with the law.

Commonwealth Officer

[DM] is clearly an 'officer of the Commonwealth'

Hence, CL jurisdiction can be established.

Standing

Since standing rules in ADJR and at CL are substantially the same (see *Argos*), they will be discussed together.

Under ADJR, [client] has standing if they are 'aggrieved' by the decision (s 5 ADJR), when their interests are 'adversely affected' (s 3(4)(a)). At CL, standing is established either when a private right is interfered with or when the plaintiff suffers special damage peculiar to themselves from the interference with the public right (*Boyce*). The second limb was reformulated into a broader test – 'having a special interest in the subject matter' (*ACF Gibbs J*)

Private interest model

[Client]'s own declaration was revoked, interfering with their private right to carry out offsets project. This clearly satisfies the first limb (*Boyce*) and the definition of 'aggrieved' (ss 3(4)(a)(i)-(ii), 5 ADJR), Hence, [client] has standing under both jurisdictions.

Public interest model – individual applicant

Mere intellectual or emotional concern

[Applicant] holds a 'mere intellectual or emotional concern' (*ACF 1980*) since the decision does not impact them in a manner greater than that of the general public. Their apprehension is centred around the potential environmental repercussions, mirroring the concerns shared by the broader public (*Onus*). Consequently, [applicant] lacks standing in this matter.

If landowner

[Applicant] surpasses a 'mere intellectual or emotional concern' (*ACF 1980*) as the decision significantly impacts them more than the general public. Their position as a landowner intensifies their apprehension, particularly regarding potential environmental repercussions—a concern not shared by the general public (*Onus*). Consequently, [applicant] possesses standing in this matter.

Cultural / spiritual interest

Red flag: environment / historical heritage

While [Applicant] may assert a cultural interest in the decision (*Onus*), this argument appears relatively weak. Merely residing closer to heritage or being longstanding citizens does not automatically confer a greater cultural interest than the general public. In *Onus*, the Indigenous people are custodians of the relics by the laws and customs of their community. These relics hold profound cultural and spiritual significance for them, serving as vital tools in passing down their cultural legacy to future generations. Consequently, [applicant] is unlikely to establish standing given the stark contrast in cultural importance.

Economic interest

[Applicant] has an economic interest in the matter, as, on the balance of probabilities, [applicant] would likely experience a not insignificant loss of profitability if the project were to proceed (*Argos*, French CJ and Keane J).

[Applicant] lacks an economic interest in the matter due to its lack of directness. Drawing a parallel with Argos, where potential detriment was contingent upon Cavo's business failure—an event that has yet to materialise—[applicant]'s economic loss remains speculative. However, [applicant] may rely on Gageler J's broader approach, contending that their loss is a consequential effect. Although it remains uncertain whether the court will endorse this perspective, there is a likelihood that the court will consider and give weight to this reasoning, accepting this more comprehensive approach.

Trade union

[Applicant] has a large number of members who are [employed as shop assistants]. These members clearly have special interest in the decision, that are greater and distinct from that of the general public (*Onus*). This is because Following *Shop distributive*, as the majority of [Applicant]'s members are affected by the decision, thereby establishing [Applicant]'s standing.

Public interest model – group applicant

[Organisation]'s position may resemble ACF's (*ACF 1980*), but case law suggests courts have increasingly granted standing to public interest groups more leniently.

The fact that [organisation] is based outside of Australia does not automatically preclude standing. Instead, the court would employ a multifactorial approach to assess standing (see *Animals' Angels*).

Applying the multifactorial approach per *North Coast*:

[Organisation]

- Demonstrates sufficient Australian presence (*Animals' Angels*)
- Is a peak organisation (*North Coast*)
- Is recognised by government bodies (*North Coast*)
- Has received funding from the government to pursue its objectives (*North Coast*)
- Has been operating for a significant period of time (*North Coast*)
- Their activities seamlessly align with the subject matter (*Animals' Angels*)
- Has actively participated in advisory committees and government decisions (*North Coast*), [organisation] has demonstrated a substantial involvement in relevant discussions.
- Their complaint is not frivolous as the decision directly pertains to their ongoing work,

Animals' Angels granted standing even with limited factors in favour and the term 'person aggrieved' is not narrowly interpreted (*Toohey*).

Furthermore, 'community perceptions' are also a crucial factor (*ACF 1989*), and the community would expect organisations like [organisation] to represent [Traditional Owners]' interests, further suggesting standing. While [organisation]'s policy appears inconsistent with CCCFIA's objects (*Right to Life*), the High Court in *Argos* has impliedly overturned this narrow approach. Considering [organisation]'s strong commitment to [climate justice], the court is likely to grant them standing since their interest goes beyond 'mere intellectual or emotional concern[s]' (*ACF 1980*).

Joinder

The court has discretion to permit [applicant 2] to join [applicant 1]'s application if they are 'interested' in the decision (s 12 AJDR). Similar to being 'aggrieved', [applicant 2] must establish standing.

Reasons

Obtaining reasons for the revocation is advisable as it allows [client] to identify breached grounds of review and formulate effective arguments in response.

Under CL, there is no right to reasons (*Osmond*, *Wingfoot*). However, under ADJR, given that [client] has standing, they possess a statutory right to reasons under s 13(1) ADJR. [DM] is obligated to provide reasons within 28 days (s 13(2) ADJR), outlining 'findings on material questions of facts'.

GOR

Unless explicitly stated otherwise, the grounds below can apply to both CL and ADJR jurisdictions.

Simple Ultra Vires

[Decision maker] must not [make a decision / act in a way in relation to making a decision] that is not authorised by law (s 5(1) ADJR / s 6(1) ADJR, *Shanahan*).

(A) Application for eligible offsets projects

Application for declaration of eligible offsets project (s 22 CCCFITA) A person may apply to the Regulator for the declaration of an offsets project as an eligible offsets project.
Information and documents to accompany application (reg 13 CCCFIR) (1) The following information must accompany an application for the declaration of an offsets project as an eligible offsets project, unless the Regulator advises the applicant, in writing, that the information is not required: (a) the name and contact details of the applicant and whether the applicant is: (b) a description of the offsets project; (c) the name of the applicable methodology determination; ... (k) whether the applicant passes the fit and proper person test (l) information that shows that the applicant has the legal right to carry out the project; (m) a forward abatement estimate for the project;
Information to accompany application (reg 15 CCCFIR) An application for the declaration of an offsets project as an eligible offsets project must be accompanied by the following information: (a) the applicant's full name, address and contact details; (b) the applicant's business name or trading name, if different from the full name; (c) the address of the applicant's principal place of business; (d) the applicant's ABN, ACN, ARBN, GST registration number, Indigenous corporation number or other unique number; (e) the applicant's status as one of the following: (i) an individual, including an individual who is a sole trader; (ii) a body corporate; (iii) a corporation sole; (iv) a body politic; (v) a local governing body; (vi) a trust;
Declaration of eligible offsets project (s 27 CCCFITA) (1) This section applies if an application under section 22 has been made for a declaration of an offsets project as an eligible offsets project. (2) After considering the application, the Regulator may, by writing, declare that the offsets project is an eligible offsets project for the purposes of this Act.
Criteria for Declaration (s 27(4) CCCFITA) The Regulator must not declare that the offsets project is an eligible offsets project unless the Regulator is satisfied that: (a) the project is, or is to be, carried on in Australia; and (b) the project is covered by a methodology determination; and

...

- (e) the applicant is the project proponent for the project; and
- (f) the applicant **passes the fit and proper person test**

Situation 1: Application was not accompanied by required information

[Applicant] failed to provide the necessary information as required by **reg 13 / 15 CCCFIT** when submitting their application. Consequently, the application was deemed invalid. Approving an invalid application exceeds the scope permitted by CCCFIT, rendering the decision to declare the project as an eligible offset project invalid. This GOR will apply (**s 5(1)(d) ADJR**).

Situation 2: Criteria under s 27(4) CCCFITA were not met

[Regulator] must not declare that offsets project is an eligible offsets project unless [regulator] is 'reasonably' satisfied that ... (**s 27(4)(?) CCCFITA, Foley**).

(B) Revocation - ceases to pass the fit and proper person

Unilateral revocation of declaration of eligible offsets project (s 36 CCCFITA)

- (1) The regulations or the legislative rules may make provision for and in relation to empowering the Regulator to revoke a declaration under section 27 in relation to an offsets project.
- (2) Regulations or legislative rules made for the purposes of subsection (1) must not empower the Regulator to revoke a declaration unless
 - (a) the project proponent for the project **ceases to pass the fit and proper person test**; and
 - (b) 90 days pass after the cessation, and the person who, at the end of that 90-day period, is the project proponent for the project does not pass the fit and proper person test.
- (3) Regulations or legislative rules made for the purposes of subsection (1) must require the Regulator to **consult the project proponent** for the project before deciding to revoke a declaration
- (4) Regulations or legislative rules made for the purposes of subsection (1) must provide that, if a declaration of an eligible offsets project is revoked in accordance with those regulations or legislative rules, as the case may be, the Regulator **must give a copy of the revocation** to:
 - (a) the **project proponent**; and
 - (b) if the declaration relates to a sequestration offsets project—the relevant land registration official.

Unilateral revocation of declaration of eligible offsets project (s 32 CCCFITR)

- (1) The Regulator may revoke a declaration made under section 27 of the Act in relation to an offsets project for a reason mentioned in column 1 of the following table if the requirements mentioned in column 2 of the item have been met.

Item (4): The project proponent for the project ceases to pass the fit and proper person test (column 1)

All of the following must be met (column 2)

- (a) the project proponent for the project **ceases to pass the fit and proper person test**;
- (b) **90 days pass** after the cessation, and the person who, at the end of that 90-day period, is the project proponent for the project **does not pass the fit and proper person test**;
- (c) the Regulator has **consulted** the project proponent for the project in accordance with section 33;
- (d) the **28-day consultation period under section 33 has passed**.

Situation 1: Application was not accompanied by required information

[Applicant] failed to provide the necessary information as required by **reg 13 / 15 CCCFIT** when submitting their application. Consequently, the application was deemed invalid. Approving an invalid application exceeds the

scope permitted by CCCFIT, rendering the decision to declare the project as an eligible offset project invalid. This GOR will apply (s 5(1)(d) ADJR).

(C) Fit and proper test – individual

Unilateral revocation of declaration of eligible offsets project (s 60 CCCFIT)

- (1) For the purposes of this Act, an individual **passes the fit and proper person test** if:
- (a) the individual is a fit and proper person, **having regard to**:
 - i) **whether any of the events** specified in the legislative rules **have happened** in relation to the individual; and
 - ii) such other matters (if any) as are specified in the legislative rules; and
 - (b) the individual **is not an insolvent** under administration

Events for individuals, bodies corporate and executive officers of bodies corporate (reg 61 CCCFITR)

- (1) For individuals, bodies corporate and executive officers of bodies corporate (a relevant person), the following events are specified:
- (a) the relevant person has been **convicted of an offence** against a law of the Commonwealth, a State or a Territory, where the offence relates to:
 - (i) dishonest conduct; or
 - (ii) The conduct of a business; or
 - (iii) The environment or the protection of the environment;
 - (iv) Work health and safety
 - (b) the relevant person has been convicted of an offence against section 136.1, 137.1 or 137.2 of the Criminal Code;
 - (c) an order has been made against the relevant person under section 76 of the Competition and Consumer Act 2010;
 - (d) an order has been made against the relevant person under section 224 of Schedule 2 to the Competition and Consumer Act 2010, as that section applies as a law of the Commonwealth, a State or a Territory;
 - (e) during the 3-year period preceding the making of the application that is under consideration, the relevant person engaged in conduct that:
 - (i) under a Commonwealth, State or Territory law relating to the environment or to work health and safety, was the subject of an enforceable undertaking, an infringement or penalty notice or criminal proceedings that have not been finally determined; and
 - (ii) is of a kind that the Regulator considers relevant given the nature of the offsets project that is the subject of the application;
 - (f) the relevant person **has breached the Act** or the associated provisions;
 - ...
 - (k) **any other events that the Regulator considers relevant**
- (2) Paragraphs (1)(a) to (j) do not limit paragraph (1)(k).

Events for individuals / executive officers of body corporate (reg 62 / 64 CCCFITR)

For individuals / executive officers of bodies corporate, the following events are also specified:

- (a) the individual has been convicted, under a law of a **foreign country**, of an offence that corresponds to an offence mentioned in paragraph 61(1)(a) or (b);
- (b) an order that corresponds to an order mentioned in paragraph 61(1)(c) or (d) has been made against the individual under a law of a foreign country;
- (c) the individual has been convicted of an offence against a law of a foreign country in respect of a matter that corresponds to a matter in relation to which an order mentioned in paragraph 61(1)(c) or (d) may be made;
- (d) during the 3-year period preceding the making of the application that is under consideration, the individual has been issued with a notice under a law of a foreign country that corresponds to a notice mentioned in paragraph 61(1)(e);

- (e) the individual has breached a law of a foreign country that corresponds to a law mentioned in any of paragraphs 61(1)(f) to (i).

(D) Consultation

Unilateral revocation of declaration of eligible offsets project (s 36 CCCFITA)

- (5) The regulations or the legislative rules may make provision for and in relation to empowering the Regulator to revoke a declaration under section 27 in relation to an offsets project.
- (6) Regulations or legislative rules made for the purposes of subsection (1) must not empower the Regulator to revoke a declaration unless
- (c) the project proponent for the project **ceases to pass the fit and proper person test**; and
 - (d) 90 days pass after the cessation, and the person who, at the end of that 90-day period, is the project proponent for the project does not pass the fit and proper person test.
- (7) Regulations or legislative rules made for the purposes of subsection (1) must require the Regulator to **consult the project proponent** for the project before deciding to revoke a declaration
- (8) Regulations or legislative rules made for the purposes of subsection (1) must provide that, if a declaration of an eligible offsets project is revoked in accordance with those regulations or legislative rules, as the case may be, the Regulator **must give a copy of the revocation** to:
- (c) the **project proponent**; and
 - (d) if the declaration relates to a sequestration offsets project—the relevant land registration official.

Unilateral revocation of declaration of eligible offsets project (s 32 CCCFITR)

- (2) The Regulator may revoke a declaration made under section 27 of the Act in relation to an offsets project for a reason mentioned in column 1 of the following table if the requirements mentioned in column 2 of the item have been met.

Item (4): The project proponent for the project ceases to pass the fit and proper person test (column 1)
All of the following must be met (column 2)

- (e) the project proponent for the project **ceases to pass the fit and proper person test**;
- (f) **90 days pass** after the cessation, and the person who, at the end of that 90-day period, is the project proponent for the project **does not pass the fit and proper person test**;
- (g) the Regulator has **consulted** the project proponent for the project in accordance with section 33;
- (h) the **28-day consultation period under section 33 has passed**.

Situation 1: Application was not accompanied by required information

[Applicant] failed to provide the necessary information as required by **reg 13 / 15 CCCFIT** when submitting their application. Consequently, the application was deemed invalid. Approving an invalid application exceeds the scope permitted by CCCFIT, rendering the decision to declare the project as an eligible offset project invalid. This GOR will apply (**s 5(1)(d) ADJR**).

(E) Power to make principles

Unilateral revocation of declaration of eligible offsets project (s 36 CCCFITA)

- (1) The regulations or the legislative rules may make provision for and in relation to empowering the Regulator to revoke a declaration under section 27 in relation to an offsets project.

The regulation made under **s 36(1) CCCFITA** could potentially violate simple ultra vires GOR if it goes beyond fulfilling the purpose of the Act and alters or expands the legislative intention (**Shanahan**). But the regulation can be valid if it is incidental to the Act — a subsidiary means of achieving the purpose of the Act (**Shanahan**).

The Regulation [fulfil / does not fulfill] the objectives of CCCFITA because it [aligns / does not align] with the objects of:

- Removing greenhouse gases from the atmosphere and avoiding emissions to meet international obligations (s 3(2) CCCFITA)
- Creating incentives for people to carry on certain offsets projects (s 3(3) CCCFITA)
- Increasing carbon abatement in a manner consistent with the protection of Australia's natural environment and improving resilience to the effects of climate change (s 3(4) CCCFITA)

Hence, reg X attempts to expand the purpose of the Act, inconsistent with its provisions, constitutes a breach of simple ultra vires.

Shanahan – the Act authorised establishing an Egg Board, which would sell eggs in Victoria. Act provided that the Governor could make regulation 'necessary or expedient for the administration of the Act'. Reg 44 made it an offence to place eggs in cold storage without the board's consent. Shanahan from NSW was charged with having eggs in cold storage. Reg 44 would be valid if it concerned only with eggs vested in the Board: because the purpose of the legislation is to give Board control of such eggs. Reg 44 extends to eggs which the board has and can have nothing to do. The action was related to storage or marketing.

Procedural UV

PBS Factors

To ascertain Parliament's intention, the following factors should be considered (*Project Blue Sky*):

Language of the provision	The section employs [mandatory / directory language], suggesting that Parliament intended a failure to comply with the procedural condition [would / would not] render the decision invalid (<i>Project Blue Sky</i>).
Object of the Act	As the procedure aligns with the objectives of CCCFITA, it is more likely to be deemed an essential procedural condition (<i>Project Blue Sky</i>).
Pre- / post-decision requirement	As the procedural requirement is a [pre- / post-decision] requirement, upon contextual construction, it indicates it [is / is not] an essential procedural condition (<i>Project Blue Sky</i>).
'vague' or 'precise' terms	The more precise and 'rule-like' the procedure, the more likely it is to be considered an essential procedural condition (<i>Project Blue Sky</i>). Cf <i>Project Blue Sky</i> – the section required PBS to abide by 'international obligations', very vague; what obligations?
Written requirement	The notice of the decision needs to be in writing, suggesting it as an essential requirement, similar to the written notice requirement in SAAP.
Location in the Act	The procedural requirement falls within Part 3 – the central part of CCCFITA, suggesting it is an essential procedural requirement.

	Cf <i>Project Blue Sky</i> – the international obligation provision was at the back of the Act, so points to not being an essential procedural condition.
Consequence for parties if decision is valid	The procedure, aimed at ensuring procedural fairness, becomes crucial in upholding natural justice, so it is highly probable that it is considered an essential requirement (eg <i>SAAP</i>)
Public inconvenience	If it is a minor requirement that is frequently breached, invalidating the decision would lead to public inconvenience (<i>Project Blue Sky</i> .)

(A) Declaration written requirement

Declaration of eligible offsets project (s 27 CCCFITA)

(2) After considering the application, the Regulator **may, by writing**, declare that the offsets project is an eligible offsets project for the purposes of this Act.

Situation 1: Failure to provide written declaration

The Regulator failed to provide written declaration, breaching the procedural requirement under s 36(3) CCCFITA. Nevertheless, whether this breach can invalidate the decision depends on legislative intent (*Project Blue Sky*).

Prima facie, the section employs mere directory language and does not exhibit a rule-like quality (*Project Blue Sky*), suggesting it is a non-essential requirement. Distinguishing it from *SAAP*, the failure to provide a written declaration would not result in any substantive injustice. Therefore, this procedure is unlikely to be deemed an essential procedural requirement, and a breach would not render the decision invalid. Consequently, the GOR cannot be made out.

(B) Further Information request

Unilateral revocation of declaration of eligible offsets project (s 24 CCCFITA)

(1) The Regulator may, **by written notice** given to an applicant, require the applicant to give the Regulator, within the period specified in the notice, **further information in connection with the application**.

Situation 1: Failure to notify

The Regulator failed to give written notice [applicant], breaching the procedural requirement under s 24(1) CCCFITA. Nevertheless, whether this breach can invalidate the decision depends on legislative intent (*Project Blue Sky*).

Prima facie, the section employs mere directory language and does not exhibit a rule-like quality (*Project Blue Sky*), suggesting it is a non-essential requirement. Distinguishing it from *SAAP*, the failure to provide a written notice does not result in substantive injustice for [applicant]. Therefore, this procedure is unlikely to be deemed an essential procedural requirement, and a breach would not render the decision invalid. Consequently, the GOR cannot be made out.

(C) Revocation – consultation requirement

Unilateral revocation of declaration of eligible offsets project (s 36 CCCFITA)

(3) Regulations or legislative rules made for the purposes of subsection (1) must require the Regulator to **consult the project proponent** for the project **before deciding to revoke a declaration**.

Consultation (reg 33 CCCFITA)

- (1) Before deciding to revoke a declaration made under section 27 of the Act in relation to an offsets project for a reason mentioned in column 1 of the table in subsection 32(1), the Regulator must:
- (a) give each **project proponent** for the project **written notice of the proposed revocation**; and
 - (b) **invite the proponent to make a submission** about the proposed revocation **within 28 days** after the date of the notice; and
 - (c) if the Regulator considers that the landholder or another person may **want to be considered a project proponent** for the project, the Regulator **must take reasonable steps to inform** that person of the proposed revocation.

Situation 1: Failure to consult before making the decision

The Regulator failed to consult [**project proponent**] in accordance with **reg 33 CCCFITA** before deciding to revoke a declaration, breaching the procedural requirement under **s 36(3) CCCFITA**. Nevertheless, whether this breach can invalidate the decision depends on legislative intent (*Project Blue Sky*).

The procedure may seem unrelated to **CCCFITA**'s objectives; however, it is a pre-decision requirement. The subsection employs imperative language, exhibits a 'rule-like' quality, and falls within Part 3—the central section of CCCFITA (**s 36(3) CCCFITA**, *Project Blue Sky*), indicating its significance. Additionally, invalidating the decision is unlikely to result in public inconvenience (*Project Blue Sky*). More importantly, the procedure is crucial in ensuring procedural fairness for the project proponent (*SAAP*). Denying them the opportunity to have a say also denies natural justice, contradicting Parliament's intention (*SZIZO*). Therefore, breaching this essential procedural condition could invalidate the decision and necessitate a valid GOR (**s 5(1)(b) ADJR**).

(D) Notification of revocation

Unilateral revocation of declaration of eligible offsets project (s 36 CCCFITA)

(4) Regulations or legislative rules made for the purposes of subsection (1) must provide that, if a declaration of an eligible offsets project is revoked in accordance with those regulations or legislative rules, as the case may be, the Regulator **must give a copy of the revocation** to:

- (a) the **project proponent**; and
- (b) if the declaration relates to a sequestration offsets project—the relevant land registration official.

Unilateral revocation of declaration of eligible offsets project (reg 32(2) CCCFITA)

(2) If the Regulator revokes a declaration under subsection (1), the Regulator **must, as soon as practicable** after revoking the declaration, give **a copy of the revocation** to:

- (a) **the project proponent** for the project; and
- (b) if the revoked declaration related to a sequestration offsets project—the relevant land registration official for the project

Situation 1: Failure to notify

The Regulator failed to give a copy of the revocation to [**project proponent**] as soon as practicable after revoking the declaration (**reg 32(1) CCCFITA**), breaching the procedural requirement under **s 36(4) CCCFITA**. Nevertheless, whether this breach can invalidate the decision depends on legislative intent (*Project Blue Sky*).