

Explanatory Statement – Public Consultation Draft

This draft Explanatory Statement supports the public consultation on the proposed variation to the *Carbon Credits (Carbon Farming Initiative—Facilities) Methodology Determination 2015*.

EXPLANATORY STATEMENT

Consultation Draft

Carbon Credits (Carbon Farming Initiative) Act 2011

For the proposed *Carbon Credits (Carbon Farming Initiative—Facilities) Methodology Determination Variation 2022*

Purpose

The draft *Carbon Credits (Carbon Farming Initiative—Facilities) Methodology Determination Variation 2022* (the **draft Variation**) proposes to amend the *Carbon Credits (Carbon Farming Initiative—Facilities) Methodology Determination 2015* (the **Determination**).

The Determination provides a high-level, activity-neutral framework within which proponents can calculate abatement from facilities that report under the *National Greenhouse and Energy Reporting Act 2007* (the **NGER Act**). This approach provides flexibility for project proponents to determine what abatement activities are most appropriate for each facility and encourages innovation in project design.

The draft Variation proposes to change the Determination in three ways.

Firstly, it proposes to add the replacement of lighting equipment (lamps and luminaries) to the list of ineligible abatement activities. This is for consistency with the revocation of the *Carbon Credits (Carbon Farming Initiative—Commercial and Public Lighting) Methodology Determination 2015* (the **2015 lighting determination**) pursuant to findings that lighting upgrades to highly energy efficient products are increasingly likely to occur in the ordinary course of events. The exclusion ensures that abatement generated under the Determination continues to meet the offsets integrity standard of additionality.

Secondly, it proposes to amend the definition of statement of activity intent to better align the requirements of the Determination with the offsets integrity standards in the *Carbon Credits (Carbon Farming Initiative) Act 2011* (the **Act**).

Thirdly, the draft Variation would amend the Determination to require the baseline and project emissions intensity for an National Greenhouse and Energy Reporting (**NGER**) year (an **NGER reporting year**) in a reporting period be calculated using the electricity emissions intensity factor in force at the end of the NGER reporting year. This change ensures that

abatement calculated under the Determination more accurately reflects the emissions that would have been produced during an NGER reporting year in a reporting period.

Legislative provisions that authorise the Variation

The Determination was made under subsection 106(1) of the Act.

The draft Variation is to be made under subsection 114(1) of the Act, which empowers the Minister to vary, by legislative instrument, a methodology determination.

Background to the Emissions Reduction Fund

The Act enables the crediting of greenhouse gas abatement from emissions reduction activities across the economy. Greenhouse gas abatement is achieved either by reducing or avoiding emissions or by removing carbon from the atmosphere and storing it in soil or vegetation.

Further information on the ERF is available at: <https://www.dcceew.gov.au/> or www.cleanenergyregulator.gov.au/.

Emissions reduction activities are undertaken as offsets projects. The process involved in establishing an offsets project is set out in Part 3 of the Act. An offsets project must be covered by, and undertaken in accordance with, a methodology determination.

Subsection 106(1) of the Act empowers the Minister to make a methodology determination by legislative instrument. The purpose of a methodology determination is to establish procedures for estimating abatement (emissions reduction and sequestration) from eligible projects and rules for monitoring, record-keeping, and reporting. These methodologies will ensure that emissions reductions are genuine—that they are both real and additional to business as usual.

In deciding to make a methodology determination, the Minister must have regard to the advice of the Emissions Reduction Assurance Committee (the **ERAC**), an independent expert panel that assesses whether methods meet the integrity requirements of the ERF. The Minister must not make or vary a methodology determination if the ERAC considers it inconsistent with the offsets integrity standards, which are set out in section 133 of the Act. The Minister will also consider any adverse environmental, economic, or social impacts likely to arise as a result of projects to which a methodology determination applies.

Offsets projects that are undertaken in accordance with a methodology determination and approved by the Clean Energy Regulator (the **Regulator**) can generate Australian carbon credit units (**ACCUs**). These units represent emissions reduction from the project. Only abatement that could be counted towards Australia's international emissions reduction targets can be credited as ACCUs.

Background to the draft Variation

On 7 April 2022 the 2015 lighting determination was revoked on the basis that there was reasonable evidence that the 2015 lighting determination no longer complied with the offsets integrity standard of additionality; that is, that projects under that determination should result

in carbon abatement that is unlikely to occur in the ordinary course of events. The 2015 lighting determination provided for crediting emissions reductions from offsets projects that improve the energy performance of lighting systems in commercial and industrial buildings, as well as public areas, such as pedestrian, street and traffic lighting. LED products have improved significantly since the 2015 lighting determination was introduced, decreasing in cost and increasing in availability. At the same time, regulatory changes and changes in industry standards have occurred that affect the ongoing additionality of the lighting upgrade activities under the method with only higher energy efficient LED products able to meet many of the requirements. These changes in the market mean that it is increasingly likely that lighting upgrades to highly energy efficient products will occur in the ordinary course of events. The draft Variation removes the replacement of lighting equipment (lamps and luminaires) to ensure that that abatement credited under the Determination continue to meet the offsets integrity standard of additionality.

In late 2019 the ERAC commenced a periodic review of the Determination as required under section 255 of the Act. The ERAC recommended amending the statement of activity intent to better align with the additionality requirement articulated in the CFI Act. Due to the rapid installation of new renewable energy generation capacity, the ERAC also recommended introducing a decay factor to the grid electricity emissions factor, to be used as a proxy for the counterfactual emissions intensity for electricity. Since this review, the ERAC have undertaken a number of other reviews (whether periodic or crediting period extension) and for this purpose instead recommended that the emissions intensity factor used in the calculations for abatement from electricity displacement activities, and emissions from electricity consumed from the operation of a project, be amended from the value that is fixed at the time of project declaration to the factor that is current at the end of each reporting period. This recommendation ensures that abatement credited under the Determination meets the offsets integrity standards, specifically that estimates are accurate, and conservative given the decline in grid emissions intensity over time. The draft Variation implements these recommendations.

Operation of the Variation

The draft Variation amends sections 5, 8, 18, 26, 36, 37, 44, 48, 52, 69, and adds new section 12A of the Determination.

The proposed amendment to sections 5 (by adding new definitions of ***lamp***, ***lighting equipment*** and ***luminaire***) and 8 will include the replacement of lighting equipment (lamps and luminaires) that has a material effect on the project abatement as an ineligible activity for the purposes of the Determination. Other activities like modifications and supplementation of lighting systems, such as facilitating changes to control gear and energy sources, will remain eligible project abatement activities under the Determination.

The proposed amendment to sections 5, 18, 26, and 69 will require the ***statement of activity intent*** to be signed by the ***responsible financial officer*** for the person with operational control over the site. It will also require that the statement ensures that all project abatement activities that the project proponent intends to implement (or has implemented) at the facility at the time the statement is made ***would likely not be*** implemented at the facility during the

crediting period for the project in the absence of a declaration of the project as an eligible offsets project.

The proposed amendment to sections 36, 37, 44, 48, 52, and addition of new section 12A will require project proponents to use the electricity grid emissions intensity factor in force at the end of the NGER reporting year to calculate the baseline and project emissions intensity. This change ensures that abatement calculated under the Determination is a true reflection of the emissions that would have been produced during an NGER reporting year in a reporting period.

The proposed Variation will not affect projects that are already registered and using the existing Determination. Section 126 of the Act sets out that even after a methodology determination has been varied, a registered eligible offsets project can continue to use the methodology determination for the remainder of its crediting period in the form that applied to the project before the variation was made. Under section 128 of the Act, a project proponent may choose to apply to the Regulator for approval to move their project to the varied Determination from the start of the project's current reporting period. All decisions to approve eligible offsets projects after the commencement of the proposed Variation will need to comply with the Determination as varied by the proposed Variation.

Consultation

The draft Variation was developed by the Regulator.

Public consultation is being undertaken from DD October 2022 to DD November 2022, published on the Department's website at www.dcceew.gov.au.

Variation details

Details of the proposed Variation are at Attachment A.

Attachment A

Details of the proposed Legislative Instrument

1 Name

Section 1 sets out the full name of the proposed Variation, which is the *Carbon Credits (Carbon Farming Initiative—Facilities) Methodology Determination Variation 2022*.

2 Commencement

Section 2 provides that the proposed Variation commences on the day after it is registered on the Federal Register of Legislation.

3 Authority

Section 3 provides that the proposed Variation will be made under subsection 114(1) of the Act.

4 Amendment of methodology determination

Section 4 provides that the *Carbon Credits (Carbon Farming Initiative—Facilities) Methodology Determination 2015* will be amended as set out in Schedule 1 to the proposed Variation.

Schedule 1—Amendments of the

Carbon Credits (Carbon Farming Initiative—Facilities) Methodology Determination 2022

The sections that are not specified below are equivalent to the respective existing sections in the Determination and remain unchanged.

1 Section 5 (Definitions)

Item 1 repeals the definitions for *chief financial officer*, *declaration day* and *statement of activity intent*, and inserts definitions for *lamp*, *lighting equipment*, *luminaire*, *responsible financial officer*, and *statement of activity intent*.

The definition of the *statement of activity intent* has been updated to ensure that activities undertaken under the Determination are *unlikely* to occur in the ordinary course of events. This ensures the Determination consistent with paragraph 133(1)(a) of the Act, which requires that projects covered by a methodology determination should result in carbon abatement *unlikely* to occur in the ordinary course of events (disregarding the effect of the Act).

The proposed Variation introduces the new term *responsible financial officer* further to section 18(f), where it is proposed that the *responsible financial officer* of the person with operational control of the site of a facility is required to sign the *statement of activity intent*. In some instances, the person with operational control of the facility will not be the project proponent. For example, if the registered project proponent for the project is an agent acting on behalf of the person with operational control of the facility.

The definition of *declaration day* is removed pursuant to the proposed amendments to sections 37, 44, 48 and 52 that require project proponents to use of the electricity grid emissions intensity factor in force at the end of the NGER reporting year to calculate the baseline and project emissions intensity.

2 Section 5 (definition of *excluded NGER fugitive emissions*)

On 1 July 2021 Division 3.3.9 of the *National Greenhouse and Energy Reporting (Measurement) Determination 2008* (the NGER (Measurement) Determination) was repealed and substituted by Divisions 3.3.6A, 3.3.9A, 3.3.9B and 3.3.9C of that instrument. Accordingly, item 2 repeals paragraph (g) of the definition of *excluded NGER fugitive emissions* and substitutes it with new paragraphs referring to provisions replacing Division 3.3.9 of the NGER (Measurement) Determination.

3 Section 8

Item 2 inserts a new paragraph 8(4A) to include the replacement of lighting equipment (lamps and luminaires) that has a material effect on the project abatement as an ineligible abatement activity for the purposes of the Determination.

This is a technology neutral approach to ensuring that abatement generated under the Determination does not include lighting upgrades to highly energy efficient products, such as upgrading from a conventional lighting system to light-emitting diode lighting systems.

Activities involving the following remain eligible under the Determination:

- modification of lighting systems, such as installing lighting control systems (such as motion sensors, sensor lights, and programmable and manual dimmers) which affect the way lighting systems consume electricity; and
- supplementing of lighting systems, such as installing equipment that generates electricity for direct use by the lighting systems (such as integrated photovoltaic luminaire units).

4 After section 12

Item 3 adds a new section 12A after section 12 to refer to factors or parameters used in calculations that are derived from the document entitled “National Greenhouse Accounts Factors” (NGA Factors document), published by the Department and as in force from time to time.

The effect of subsection 12A(1) is that if the NGA Factors document is amended during an NGER reporting year in a project’s reporting period, then the project proponent will be required to use the factor or parameter prescribed in the document that is in force at the end of the NGER reporting year. This change is intended to ensure that the abatement calculations are conservative and accurate, as the emission intensity of electricity generation has declined since the Determination was made and is projected to continue to decline.

Paragraph 12A(2)(a) provides that subsection 12A (1) does not apply if the Determination sets out other requirements.

Paragraph 12A(2)(b) provides that subsection 12A(1) does not apply where it is not possible to retrospectively apply a factor or parameter from the NGA Factors document that is in force at the end of the NGER reporting year.

In circumstances where paragraph 12A(2)(b) applies, it is expected that project proponents will use the version of NGA Factors document in force at the time at which monitoring or other actions were conducted. Section 70 sets out reporting requirements to be followed when paragraph 12A(2)(b) applies.

5 Paragraph 18(f)

Item 4 repeals and substitutes paragraph 18(f) to replace reference to ‘*chief financial officer*’ with ‘*responsible financial officer*’.

Section 18 sets out the requirements for a *responsible financial officer* of the person with operational control over the facility, or by another officer of that person, to make a statement that all project abatement activities that the project proponent intends to implement (or has been implemented) at the facility at the time the statement is made would likely not be implemented at the facility during the crediting period for the project in the absence of a declaration of the project as an eligible offsets project.

If the statement of activity intent for a facility is not signed by the *responsible financial officer* of the person that has operational control over the facility, the total facility abatement for the facility for an NGER reporting year may be capped in certain circumstances (see subsection 26(2)).

In some instances, the person with operational control of the facility will not be the project proponent. For example, if the registered project proponent for the project is an agent acting on behalf of the person with operational control of the facility.

6 Subsections 26(2) and 26(3)

Item 6 replaces references to '*chief financial officer*' appearing in subsections 26(2) and 26(3) with '*responsible financial officer*'.

Where a proponent has chosen to submit a *statement of activity intent* that is not signed by the *responsible financial officer* of the person with operational control of the facility, the total facility abatement worked out in **equation 3** is capped at 100,000 tonnes of CO₂-e for the NGER reporting year. If the proponent has provided a statement that is signed by the *responsible financial officer*, then abatement from the facility is uncapped.

In order to avoid having abatement capped, a *statement of activity intent* signed by the *responsible financial officer* is only taken to have been received if it was provided to the Regulator as part of the project application (as allowed for in section 18), or prior to the submission of the offsets report for the relevant NGER reporting year (see subsection 26(3)).

7 Section 36 (definition of EF_{EP})

Item 7 repeals and substitutes the definition of EF_{EP} in section 36.

This amendment will require project proponents to use the electricity emissions intensity factor in force at the end of the NGER reporting year (whether obtained from an NGA Factors or the supplier of the electricity) to calculate the total baseline NGER emissions for a facility for an NGER reporting year in a reporting period.

8 Subsection 37(3) (definition of EF_{EP})

Item 8 repeals and substitutes the definition of EF_{EP} in section 37(3).

This amendment will require project proponents to use the electricity emissions intensity factor in force at the end of the NGER reporting year (whether obtained from an NGA Factors or the supplier of the electricity) to calculate the weighted average emissions intensity of a production variable for the financial years beginning on 1 July 2006 and 1 July 2007 in a reporting period.

9 Subsection 37(4) (definition of EF_{EP})

Item 9 repeals and substitutes the definition of EF_{EP} in section 37(4).

This amendment will require project proponents to use the electricity emissions intensity factor in force at the end of the NGER reporting year (whether obtained from an NGA Factors or the supplier of the electricity) to calculate the industry average emissions intensity of a production variable covered by an item in the table in clause 1 of Schedule 1 in a reporting period.

10 Section 44(2) (definition of EF_{EP})

Item 10 repeals and substitutes the definition of EF_{EP} in section 44(2).

This amendment will require project proponents to use the electricity emissions intensity factor in force at the end of the NGER reporting year (whether obtained from an NGA Factors or the supplier of the electricity) to calculate the NGER emissions (general) for the facility for an NGER reporting year in a reporting period.

11 Subsection 48(1) (definition of EF_{Elec})

Item 11 repeals and substitutes the definition of EF_{EP} in section 48(1).

This amendment will require project proponents to use the electricity emissions intensity factor in force at the end of the NGER reporting year (whether obtained from an NGA Factors or the supplier of the electricity) to calculate the electricity abatement adjustment A for a facility during an NGER reporting year in a reporting period.

12 Paragraph 48(3)(c)

Item 12 substitutes “on the declaration day” in subsection 48(3)(c) with “at the end of the NGER reporting year”.

Where an electricity emissions intensity factor is obtained from the supplier of the electricity, this amendment will require project proponents to use the electricity emissions intensity factor that is in force at the end of the NGER reporting year, as specified in subsection 48(1).

13 Subsection 52(1) (definition of EF_{Elec})

Item 13 repeals and substitutes the definition of EF_{EP} in section 52(1).

This amendment will require project proponents to use the electricity emissions intensity factor in force at the end of the NGER reporting year (whether obtained from an NGA Factors or the supplier of the electricity) to calculate the electricity abatement adjustment B for a facility during an NGER reporting year in a reporting period.

14 Paragraph 52(3)(c)

Item 14 substitutes “on the declaration day” in subsection 52(3)(c) with “at the end of the NGER reporting year”.

Where an electricity emissions intensity factor is obtained from the supplier of the electricity, this amendment will require project proponents to use the electricity emissions intensity factor that is in force at the end of the NGER reporting year, as specified in subsection 52(1).

15 Paragraph 69(c)

Item 14 omits the words ‘*chief financial officer*’ and replaces them with a reference to ‘*responsible financial officer*’.