

## **EXPLANATORY STATEMENT**

### **SELECT LEGISLATIVE INSTRUMENT NO. , 2015**

Issued by the Authority of the Minister for the Environment

*National Greenhouse and Energy Reporting Act 2007*

*National Greenhouse and Energy Reporting (Audit) Amendment Determination 2015 (No. 1)*

#### **Purpose**

The *National Greenhouse and Energy Reporting Act 2007* (NGER Act) establishes the National Greenhouse and Energy Reporting (NGER) Scheme, which is a national framework for reporting greenhouse gas emissions, and energy consumption and production by Australian corporations. Data reported under the NGER Act assists Australia meet its international reporting obligations and informs government policy, programs and the Australian public.

The *National Greenhouse and Energy Reporting Regulations 2008* (the Principal Regulations) provide necessary details that allow compliance with, and administration of, the NGER Act. The *National Greenhouse and Energy Reporting Amendment (2015 Measures No.2) Regulation 2015* (the amendment Regulation) amends the Principal Regulations to support amendments made to the NGER Act by the *Carbon Farming Initiative Amendment Act 2014* (the CFI Amendment Act).

These amendments, which were passed in December 2014 and which take effect from 1 July 2016, establish the framework for the safeguard mechanism, a core element of the Emissions Reduction Fund.

Section 75(1) of the NGER Act provides that the Minister may make a legislative instrument prescribing requirements to be met by audit team leaders in preparing for and carrying out greenhouse and energy audits and in preparing audit reports – the *National Greenhouse and Energy Reporting (Audit) Determination 2009* (the Audit Determination).

Several of the administrative processes necessitated by the safeguard mechanism will require regulated entities to accompany applications with audit reports. When the relevant provisions commence on 1 July 2016, the CFI Amendment Act will insert safeguard audits into the current audit regime set out in the NGER Act. Until that point, the NGER Act will continue to govern ‘greenhouse and energy audits’ and audits under the *Carbon Credits (Carbon Farming Initiative) Act 2011*.

The *National Greenhouse and Energy Reporting (Audit) Amendment Determination 2015 (No. 1)* (Amendment Determination) will replace the legacy term ‘CFI audits’ with ‘ERF audits’ (Schedule 1); and will introduce safeguard audits into the NGER audit regime (Schedule 2).

Details of the changes to the Audit Determination proposed by the Amendment Determination are set out in Attachment A.

The Amendment Determination will be a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

Schedule 1 of the Amendment Determination will commence on the day after the Amendment Determination is registered on the Federal Register of Legislative Instruments. Schedule 2 of the Amendment Determination will commence on 1 July 2016, when the amendments to the NGER Act which give effect to the safeguard mechanism also commence.

### **Background to the Safeguard Mechanism**

The Emissions Reduction Fund is the centrepiece of the Australian Government's efforts to reduce emissions. Its primary objective is to assist Australia to meet its emissions reduction target of five per cent below 2000 levels by 2020, and 26 to 28 per cent below 2005 levels by 2030 consistent with its international obligations under the United Nations Framework Convention on Climate Change and its Kyoto Protocol.

The Emissions Reduction Fund purchases emissions reductions at lowest cost. To protect taxpayer funds the Government will implement a safeguard mechanism to ensure that emissions reductions purchased through the Emissions Reduction Fund are not displaced by a significant rise in emissions above business-as-usual levels elsewhere in the economy. It will do this by requiring large emitting facilities to keep their emissions within baseline levels.

### **Consultation**

The Government has consulted widely on the safeguard mechanism's design. Terms of reference were consulted on in October 2013, followed by a Green Paper in December 2013 leading to release of a White Paper in April 2014. The Government announced a number of important policy decisions on the safeguard mechanism in the White Paper. During passage of the Carbon Farming Initiative Amendment Bill through Parliament, amendments were made to the NGER Act. These established a legislative framework for the safeguard mechanism and enabled final design elements to be implemented through legislative rules.

A Regulation Impact Statement was prepared that explores options for the remaining design decisions pertaining to the safeguard mechanism, that is those design elements not decided in either the Act or the White Paper. It also includes estimates of the regulatory burden arising from the introduction of the safeguard mechanism to inform the Government's final decision on its design.

Public consultation was undertaken in September 2015 on the exposure Amendment Determination. This Explanatory Statement informed that consultation.

**Details of the sections in the *National Greenhouse and Energy Reporting (Audit) Amendment Determination 2015 (No.1)***

**Section 1 – Name**

1.1 Section 1 provides that the title of the Amendment Determination is the *National Greenhouse and Energy Reporting (Audit) Amendment Determination 2015 (No. 1)*.

**Section 2 – Commencement**

1.2 Section 2 provides for Schedule 1 of the Amendment Determination to commence on the day after the Amendment Determination is registered on the Federal Register of Legislative Instruments.

1.3 Schedule 2 of the Amendment Determination will commence on 1 July 2016, when the amendments to the NGER Act which give effect to the safeguard mechanism also commence.

**Section 3 – Authority**

1.4 Section 3 provides that the legislative authority for the Amendment Determination is the *National Greenhouse and Energy Reporting Act 2007*.

**Section 4 – Amendment of the audit determination**

1.5 Section 4 provides that the *National Greenhouse and Energy Reporting (Audit) Determination 2009* (the Determination) is amended as set out in the Schedule.

**Schedule 1 — ERF audit amendments**

1.6 Schedule 1 amends the Audit Determination to ensure that it is relevant to the Emissions Reduction Fund (ERF). There are three categories of amendments included in Schedule 1, as summarised below.

**Substitute ‘CFI Audit’ with ‘ERF Audit’**

1.7 To reflect the changes made to the Act by the CFI Amendment Act, references to ‘CFI Audit’ will be replaced with ‘ERF Audits’. This change is reflected in other consequential amendments throughout the Amendment Determination in all instances where the Audit Determination specifically refers to the audits relevant to the ERF, which incorporates former ‘CFI Audits’. This relates to [Items 2, 5, 8 and 15].

**Part 6 Audits**

1.8 [Item 6] inserts at section 1.4 the concept of **Part 6 audit** which reflects the changes made to the Act by the CFI Amendment Act to collectively refer to both greenhouse and energy audits and ERF audits as a Part 6 audit.

1.9 This concept is reflected in [Item 2], which omits the term “a CFI audit” in subsection 1.3(4) and substitutes the term “ERF audits (collectively called Part 6 audits)”.

1.10 This change is reflected in other consequential amendments throughout the Amendment Determination to omit the term “greenhouse and energy audit or a CFI audit” and replace it with “Part 6 audit” [items 4, 7, 10, 11, 13, 14, 16, 17, 18, 19, 20 and 21]

### References to the CFI Act

1.11 To reflect the inclusion of additional provisions in the CFI Act as a result of the CFI Amendment Act, references to section 13 of the CFI Act must now include paragraphs 13(1)(ea) and 13(1)(eb) in addition to paragraph 13(1)(e). [Items 1, 3, 9 and 12]

1.12 Similarly, to reflect amendments to section 76 of the CFI Act as a result of the CFI Amendment Act, references to section 76 of the CFI Act must be amended to refer to 76(4)(ca) and 76(4)(cb) in addition to 76(4)(c). [Items 1, 3, 9 and 12]

1.13 This is a consequential amendment that reflects the changes made by the CFI Amendment Act to omit the term “CFI audit” and substitutes the term “ERF audit”

1.14 This amendment also reflects the new references to the requirement for an audit report to be submitted due to provisions relating to audit for the purposes of the safeguard mechanism, including applications for Certificates of Entitlement and offset reports under the CFI Act.

## **Schedule 2 — Safeguard audit amendments**

1.15 Schedule 2 contains a number of miscellaneous amendments to the Audit Determination that are designed to accommodate the safeguard mechanism audit provisions provided for by virtue of the CFI Amendment Act and the amendment Regulation.

1.16 [Item 1] inserts subsection 1.3(3B) into the overview of the Determination, to reflect the inclusion of a “safeguard audit” in an application for a baseline determination. The Act (as amended by the CFI Amendment Act) defines a “safeguard audit”.

1.17 [Item 2] inserts the term ‘safeguard audit’ into the definitions section of the Audit Determination, and is designed to include the concept of a safeguard audit in the Audit Determination. This is also reflected in definitions amended by [items 3, 5, and 6].

1.18 [Item 4] inserts the term “safeguard rules” into the definition of “NGER legislation” contained in the Audit Determination to include the safeguard rules under the umbrella of NGER legislation.

1.19 [Item 7] inserts a new subsection 1.5(1B) into the Audit Determination. This subsection is intended to clarify that a safeguard audit is designed to accompany an application for a baseline determination under the safeguard rules.

1.20 [Item 8] inserts a requirement that the auditor include in their assurance engagement plan, the auditor’s understanding of the system and process the responsible emitter has in place to identify the risk of misstatements that are material and relevant to its application requirements under the safeguard rules. This amendment aligns the requirement of a safeguard audit assurance engagement plan with the assurance engagement plans for other type of audits that are described in paragraph 3.6(5)(h) of the Determination.

**Statement of Compatibility with Human Rights**

*Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011*

***National Greenhouse and Energy Reporting (Audit) Amendment Determination 2015 (No. 1).***

This legislative instrument, referred to as the ***National Greenhouse and Energy Reporting (Audit) Amendment Determination 2015 (No. 1)***, is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

**Overview of the instrument**

This legislative instrument amends the *National Greenhouse and Energy Reporting (Audit) Determination 2009* to accommodate changes to the NGER Act and the Principle Regulations to incorporate the ERF and the safeguard mechanism. This includes replacing legacy terms such as “greenhouse and energy audits” and “CFI audits” with the terms “ERF audit” or “Part 6 audit” and extending the conducting of audits and preparation of audit reports, to include preparing for and carrying out ERF/safeguard audits, and preparing ERF/safeguard audit reports.

**Human rights implications**

This Amendment Determination does not engage any of the applicable rights or freedoms.

**Conclusion**

The Amendment Determination is compatible with the human rights and freedoms recognised or declared in the international instruments listed in Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

**Greg Hunt, Minister for the Environment**