

EXPLANATORY STATEMENT

Issued by the Authority of the Minister for Climate Change and Energy

Carbon Credits (Carbon Farming Initiative) Act 2011

Carbon Credits (Carbon Farming Initiative—Industrial Electricity and Fuel Efficiency—Revocation) Instrument 2022

Purpose

The *Carbon Credits (Carbon Farming Initiative—Industrial Electricity and Fuel Efficiency—Revocation) Instrument 2022* (the **Revocation Instrument**) revokes the *Carbon Credits (Carbon Farming Initiative—Industrial Electricity and Fuel Efficiency) Methodology Determination 2015* (the **2015 IEFE determination**) made under the *Carbon Credits (Carbon Farming Initiative) Act 2011* (the **Act**).

The 2015 IEFE determination is revoked because it has been substantially replaced by the *Carbon Credits (Carbon Farming Initiative—Industrial and Commercial Emissions Reduction) Methodology Determination 2021* (the **2021 ICER determination**).

Legislative Authority

The 2015 IEFE determination was made under subsection 106(1) of the Act. It is revoked under subsection 123(1) of the Act, which provides for the revocation of methodology determinations.

Background to Australia's carbon abatement crediting scheme

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 dioxide from the atmosphere and storing carbon in soil, biomass, or organic matter.

In 2014, the Australian Parliament passed the *Carbon Farming Initiative Amendment Act 2014*, which established Australia's carbon abatement crediting scheme, the Emissions Reduction Fund. Further information on the Fund is available at: <https://www.dcccew.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 (through emissions avoidance or sequestration) from eligible projects and rules for monitoring, record-keeping and reporting. Methodology determinations ensure that emissions reductions are genuine—that they are both real and additional to business as usual.

In deciding to revoke the 2015 IEFE determination, in accordance with paragraph 123(3)(b) of the Act, the Minister has had regard to the advice of the Emissions Reduction Assurance Committee (the **ERAC**), an independent expert panel established to advise the Minister on making, varying or revoking methodology determinations. In accordance with paragraph 123(3)(a) of the Act, the Minister has also had regard to whether the 2015 IEFE determination complies with the offsets integrity standards set out in section 133 of the Act. The ERAC advised the Minister that the IEFE method should be revoked to avoid duplication with the ICER method and because there is a risk that lighting upgrade projects under the IEFE method may not be additional. This risk reflects that the *Carbon Credits (Carbon Farming Initiative—Commercial and Public Lighting) Methodology Determination 2015* was revoked in April 2022 pursuant to findings that lighting upgrades to highly energy efficient products are increasingly likely to occur in the ordinary course of events.

Background to the determinations

Industrial and commercial operations can generate: direct (scope 1) greenhouse gas emissions from on-site fuel combustion in equipment such as boilers, furnaces, and generators; indirect (scope 2) greenhouse gas emissions from electricity consumption in electrically powered equipment such as motors and heating elements; and industrial process emissions (scope 1 and scope 2) generated in processes such as chemical and cement manufacturing. A broad range of opportunities exist to reduce these emissions.

When it was made, the 2015 IEFE determination provided an activity-neutral framework within which proponents could develop project-appropriate approaches to calculating abatement from industrial energy (i.e. electricity and fuel) efficiency activities. That approach provided flexibility for project proponents to determine what activities were most appropriate for each site included in the project.

The 2021 ICER determination was made in response to stakeholder feedback on the 2015 IEFE determination. The 2021 ICER determination enables project proponents to generate Australian carbon credit units from activities that reduce the energy emissions and industrial process emissions produced by existing equipment.

Building on the 2015 IEFE determination, the 2021 ICER determination included a number of enhancements, including:

- introducing new abatement opportunities by crediting activities that reduce industrial process emissions such as emissions from chemical and cement manufacturing,
- improving method usability by providing project proponents with greater flexibility when conducting projects and calculating abatement,
- adding the requirement for project proponents to provide a statement of activity intent and amending the calculation of scope 2 emissions from electricity consumption to better align with the offsets integrity standards.

Accordingly, it is no longer appropriate for new projects to be covered by the 2015 IEFE determination.

Impact on Existing Projects

The impact on an existing eligible offsets project that has been registered under the 2015 IEFE determination (an **existing project**) will depend on whether the crediting period for that project has commenced at the time that determination is revoked by the Revocation Instrument.

An existing project whose crediting period began before the revocation of the 2015 IEFE determination can continue to be covered by the 2015 IEFE determination in the form that applied to the project immediately before the revocation, pursuant to section 127 of the Act. However, pursuant to section 128 of the Act, the project proponent of such an existing project may request that the Clean Energy Regulator (the **Regulator**) approves the application of the 2021 ICER determination to the existing project, subject to meeting its eligibility requirements. If the request is approved by the Regulator pursuant to section 130 of the Act, the project is referred to as a “transferring IEFE project” in the 2021 ICER determination.

An existing project whose crediting period has not commenced when revocation of the 2015 IEFE determination occurs cannot be covered by the revoked determination. The project proponent of such an existing project may reapply to have their project registered as an eligible offsets project covered by the 2021 ICER determination.

New offsets projects will not be able to be registered as eligible offsets projects covered by the revoked 2015 IEFE determination.

Consultation

The 2021 ICER determination was developed by the Regulator building on feedback from prior reviews of the 2015 IEFE determination. Across 2019 and 2020, the former Department of the Environment and Energy and the former Department of Industry, Science, Energy and Resources consulted on proposed changes to the 2015 IEFE determination through a technical working group of experts from the industrial, commercial and energy efficiency sectors. The technical working group reviewed several versions of a draft variation to the 2015 IEFE determination. A crediting period extension review of the 2015 IEFE determination was also completed by the ERAC in June 2021, as required under section 255A of the Act.

The draft 2021 ICER determination implemented the feedback from these reviews. The exposure draft of the 2021 ICER determination, and the proposal to revoke the 2015 IEFE determination, were published on the website of the former Department of Industry, Science, Energy and Resources for public consultation from 20 July 2021 to 17 August 2021. Twelve submissions were received. Overall, the majority of submissions indicated broad support for the draft 2021 ICER determination. The proposed revocation of the 2015 IEFE determination was not objected to if projects under the 2015 IEFE determination which had commenced project activities prior to commencement of their crediting period were provided a pathway to transition to the 2021 ICER determination.

In response to this feedback, the draft 2021 ICER determination was amended to provide proponents of projects registered under the 2015 IEFE determination the option to apply to have these projects declared as new eligible offsets projects covered by the 2021 ICER determination where project activities had started but whose crediting period had not commenced.

Details of the non-confidential submissions received during public consultation on the exposure draft of the 2021 ICER determination are available from the website of the Department of Climate Change, Energy, the Environment and Water, <https://consult.dceew.gov.au/industrial-and-commercial-emissions-reduction>.

The Minister is satisfied that appropriate consultation, that is reasonably practicable to undertake, was undertaken on the proposal to revoke the 2015 IEFE determination and that any parties that may be affected by the Revocation Instrument were provided an opportunity to comment.

Determination Details

The Revocation Instrument is a legislative instrument within the meaning of the *Legislation Act 2003*.

The Revocation Instrument commences on the day after it is registered.

Details of the Revocation Instrument are at Attachment A. Numbered sections in this Explanatory Statement align with the relevant sections of the Revocation Instrument.

A Statement of Compatibility prepared in accordance with the *Human Rights (Parliamentary Scrutiny) Act 2011* is at Attachment B.

Details of Instrument

1 Name

Section 1 sets out the name of the instrument, which is the *Carbon Credits (Carbon Farming Initiative—Industrial Electricity and Fuel Efficiency—Revocation) Instrument 2022*.

2 Commencement

Section 2 provides that the instrument commences on the day after it is registered.

3 Authority

Section 3 provides that the instrument is made under subsection 123(1) of the *Carbon Credits (Carbon Farming Initiative) Act 2011*.

4 Interpretation

Section 4 defines the term ‘Act’ as the *Carbon Credits (Carbon Farming Initiative) Act 2011*.

5 Revocation of methodology determination

Section 5 revokes the *Carbon Credits (Carbon Farming Initiative—Industrial Electricity and Fuel Efficiency) Methodology Determination 2015* made under subsection 106(1) of the Act.

Statement of Compatibility with Human Rights

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

Carbon Credits (Carbon Farming Initiative—Industrial Electricity and Fuel Efficiency—Revocation) Instrument 2022

This legislative instrument 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 Legislative Instrument

The *Carbon Credits (Carbon Farming Initiative—Industrial Electricity and Fuel Efficiency—Revocation) Instrument 2022* revokes the *Carbon Credits (Carbon Farming Initiative—Industrial Electricity and Fuel Efficiency) Methodology Determination 2015* made under the *Carbon Credits (Carbon Farming Initiative) Act 2011*.

The determination being revoked has been substantially replaced by the *Carbon Credits (Carbon Farming Initiative—Industrial and Commercial Emissions Reduction) Methodology Determination 2021*.

Human Rights Implications

This legislative instrument does not engage any of the applicable rights or freedoms.

Conclusion

This legislative instrument is compatible with human rights as it does not raise any human rights issues.

The Hon Chris Bowen MP
Minister for Climate Change and Energy