

EXPLANATORY STATEMENT

Issued by Authority of the Minister for Climate Change and Energy

Carbon Credits (Carbon Farming Initiative) Act 2011

*Carbon Credits (Carbon Farming Initiative—Avoided Deforestation 1.1—Revocation)
Instrument 2023*

Legislative Authority

Section 123 of the *Carbon Credits (Carbon Farming Initiative) Act 2011* (the Act) provides that the Minister for Climate Change and Energy may revoke a methodology determination, a legislative instrument that is made under section 106(1) of the Act.

The methodology determination that is revoked by the *Carbon Credits (Carbon Farming Initiative—Avoided Deforestation 1.1—Revocation) Instrument 2023* (the **Revocation Instrument**) is the *Carbon Credits (Carbon Farming Initiative—Avoided Deforestation 1.1) Methodology Determination 2015* (the **avoided deforestation determination**).

Purpose

The purpose of the Revocation Instrument is to revoke the avoided deforestation determination. In effect, this will mean no new avoided deforestation projects will be able to be registered under the Act to be eligible for Australian Carbon Credit Units (ACCUs).

Revocation of the avoided deforestation determination is part of the Australian Government's implementation of recommendations from the Independent Review of ACCUs, to ensure confidence in the integrity and effectiveness of the ACCU scheme. This response assists in ensuring that offsets projects continue to support achievement of the objects of the Act, which relevantly include:

- removing greenhouse gases from the atmosphere, and avoiding emissions of greenhouse gases, to meet Australia's international obligations under the United Nations Framework Convention on Climate Change its Kyoto Protocol and Paris Agreement, and any other international agreement;
- creating incentives for people to carry on certain offsets projects;
- increasing carbon abatement in a manner that is consistent with the protection of Australia's natural environment, and improves resilience to the effects of climate change; and
- facilitating the achievement of Australia's greenhouse gas emissions reduction targets.

Australia's greenhouse gas emissions reduction targets, which reflect its nationally determined contribution under the Paris Agreement, have been legislated in the *Climate Change Act 2022* as a reduction of greenhouse gas emissions of 43 per cent below 2005 levels by 2030, and net zero emissions by 2050.

Background

Background to Australia's carbon crediting scheme

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

Emissions reduction activities are undertaken as eligible offsets projects. ACCUs may be issued for abatement that has been achieved as a result of an eligible offsets project. The process involved in establishing an eligible offsets project is set out in Part 3 of the Act. An eligible 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 offsets 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.

Background to the determination

The avoided deforestation determination provides the rules for crediting emissions reductions to landholders who protect native forests rather than permanently converting them to cropland or grassland.

The avoided deforestation determination was made in 2015 (under subsection 106(1) of the Act) to replace the *Carbon Credits (Carbon Farming Initiative) (Avoided Deforestation) Methodology Determination 2013* (the original determination). The avoided deforestation determination applies to the same activity as the original determination but has slightly different eligibility requirements, different crediting periods, and some minor changes in the sampling protocol. The original determination was revoked by the *Carbon Credits (Carbon Farming Initiative—Superseded Methodology Determinations—Revocation and Transitional Provisions) Instrument 2015* after the avoided deforestation determination was made.

Under the avoided deforestation determination, project proponents require evidence, in the form of a government approval to clear native forest issued before 1 July 2010, to demonstrate that in the absence of undertaking an ACCU project, the land would have been converted from native forest to cropland or grassland. After an eligible offsets project has been declared by the Clean Energy Regulator (under section 27 of the Act), crediting of ACCUs is based on emissions avoided by not clearing the forest and managing it in a way that maintains or increases the carbon stored in trees (carbon stock).

There are 61 projects registered under the avoided deforestation determination and two projects registered under the original determination. All projects are located in New South Wales (NSW).

Independent Review of ACCUs

In July 2022, the Government commissioned an independent panel to review the integrity of ACCUs. The purpose of the Independent Review of ACCUs (**the Review**) was to ensure

ACCUs and the carbon crediting framework maintain a strong and credible reputation supported by participants, purchasers and the broader community. The terms of reference for the Review included evaluating and advising on whether certain methodology determinations, including the avoided deforestation determination, meet the offsets integrity standards. The offsets integrity standards are set out in section 133 of the Act.

The Review considered over 200 written public submissions and consulted widely across stakeholders involved in, or with an interest in, the ACCU scheme. The Review also visited project sites to investigate methods and project implementation and commissioned expert scientific advice to assess the strengths, limitations and the science underpinning methods.

The Review concluded that the ACCU scheme arrangements were sound and identified some changes to strengthen the scheme.

In January 2023, the Government accepted in-principle all 16 recommendations of the independent panel to improve the scheme. This includes recommendation 9 which states:

No new project registrations be allowed under the current avoided deforestation method. Consideration should be given to developing new methods that incentivise the maintenance of native vegetation that has the potential to become a forest, as well as maintaining existing forests at risk of land-use conversion.

In relation to the avoided deforestation determination, the Review found that the length of time that has elapsed since the issue of any remaining unused land clearing permits implies that it would be hard to establish intent to clear land, raising questions about the additionality of any new projects that might be registered under the current method. This reflects the requirement in the avoided deforestation determination that for a project to be eligible in that determination, landholders require a clearing permission issued before 1 July 2010.

The Review's final report, public submissions and the Government's response to the Review are available at: <https://www.dccew.gov.au/climate-change/emissions-reduction/independent-review-accus>.

Consultation

The Revocation Instrument is made following extensive consultation on the avoided deforestation determination as part of the Independent Review of ACCUs. In publicising its response to the review, the Government made clear its intent to implement Recommendation 9 as a priority. Following release of the Government's response, the Department of Climate Change, Energy, the Environment and Water discussed the Government's intention to revoke the avoided deforestation determination with industry stakeholders and in a public forum.

On this basis, the Minister is satisfied that appropriate consultation, that is reasonably practicable to undertake, was undertaken on the proposed revocation of the avoided deforestation determination and that any parties that may be affected by the Revocation Instrument were provided an opportunity to comment.

Compliance with Legislative Conditions

In accordance with subsection 123(3) of the Act, in deciding to revoke the avoided deforestation determination, the Minister has had regard to:

- (a) whether the avoided deforestation determination complies with the offsets integrity standards set out in section 133 of the Act;
- (b) the advice of the Emissions Reduction Assurance Committee (the **ERAC**);
- (c) any other matters the Minister considers relevant.

In deciding to revoke the avoided deforestation determination, the Minister has accepted the finding of the Independent Review of ACCUs that new projects under the determination may not meet the offsets integrity standard of additionality in paragraph 133(1)(a) of the Act — that is, they may not result in carbon abatement that is unlikely to occur in the ordinary course of events. The Minister did not consider that compliance with the other offsets integrity standards (listed in paragraphs 133(1)(b)-(g) of the Act) was at issue in deciding to revoke the avoided deforestation determination.

The ERAC is an independent expert committee established under Part 26, Division 1 of the Act to advise the Minister on making, varying or revoking methodology determinations. In accordance with subsection 123(2) of the Act, the Minister requested advice of the ERAC about whether to revoke the avoided deforestation determination. The ERAC advised the Minister that it considered the determination complies with the additionality standard. However, noting the findings of the ACCU Review and the limited applicability of the avoided deforestation determination the ERAC advised that on balance, it supported revoking the avoided deforestation determination, and making a new determination in the future. In providing this advice, the ERAC noted project uptake under the avoided deforestation determination is limited to NSW because only clearing approvals in that jurisdiction meet the requirements of that determination; no new avoided deforestation projects have been registered since early 2021. The ERAC also noted that the avoided deforestation determination is due to sunset in 2025.

As required by subsection 123(5) of the Act, a copy of the ERAC's advice has been published on the Department's website, and is available at:
<https://www.dcceew.gov.au/climate-change/emissions-reduction/emissions-reduction-fund/methods-closed>.

Pursuant to paragraph 123(3)(c) of the Act, the Minister has also taken into account concerns raised about the integrity of the avoided deforestation determination (as outlined above) and the relevant findings and recommendations of the Independent Review of ACCUs, including the limited applicability of the method, and therefore its limited capacity to support new abatement.

Impact and Effect

The impact on an existing declared eligible offsets project that is covered by the avoided deforestation 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.

If the crediting period for an existing project has already commenced, the project will continue to be covered by the avoided deforestation determination in the form that applied to the project immediately before the revocation, pursuant to section 127 of the Act (unless the project proponent for the project applies under section 130 of the Act for the project to be covered by a different methodology determination).

If the crediting period has not commenced when the Revocation Instrument takes effect, the project cannot continue under the revoked avoided deforestation determination. Where this is the case, if the project is to continue, the project proponent would need to apply under section 130 of the Act to have another methodology determination cover the project.

Following the revocation of the avoided deforestation determination, a person would not be able to apply under the Act for a new offsets project to become a declared eligible offsets project that is covered by the revoked avoided deforestation determination.

Details/Operation

Details of the Revocation Instrument are set out in [Attachment A](#).

The Revocation Instrument commences on the day after it is registered on the Federal Register of Legislation.

The Revocation Instrument is a legislative instrument for the purposes of the *Legislation Act 2003*.

Details of the Carbon Credits (Carbon Farming Initiative—Avoided Deforestation 1.1—Revocation) Instrument 2023

Section 1 – Name

This section provides that the name of the Revocation Instrument is the *Carbon Credits (Carbon Farming Initiative—Avoided Deforestation 1.1—Revocation) Instrument 2023*.

Section 2 – Commencement

This section provides for the Revocation Instrument to commence on the day after it is registered on the Federal Register of Legislation.

Section 3 – Authority

This section provides that the Revocation Instrument is made under subsection 123(1) of the *Carbon Credits (Carbon Farming Initiative) Act 2011*.

Section 4 – Revocation of methodology determination

This section revokes the *Carbon Credits (Carbon Farming Initiative—Avoided Deforestation 1.1) 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—Avoided Deforestation 1.1—Revocation) Instrument 2023

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— Avoided Deforestation 1.1—Revocation) Instrument 2023* revokes the *Carbon Credits (Carbon Farming Initiative— Avoided Deforestation 1.1) Methodology Determination 2015 (the avoided deforestation determination)* made under the *Carbon Credits (Carbon Farming Initiative) Act 2011*.

The avoided deforestation determination is being revoked because of the risk that any new projects covered by that determination may not result in carbon abatement that is unlikely to occur in the ordinary course of events.

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