

# **EXPLANATORY STATEMENT**

Issued by authority of the Minister for Climate Change and Energy

*National Greenhouse and Energy Reporting Act 2007*

*National Greenhouse and Energy Reporting (Measurement) Amendment  
(2023 Update No.2) Determination 2023*

## **Background**

The National Greenhouse and Energy Reporting (NGER) Scheme is Australia's national system for reporting greenhouse gas emissions, energy consumption and energy production by Australian corporations.

NGER Scheme legislation includes:

- the *National Greenhouse and Energy Reporting Act 2007* (the Act);
- the *National Greenhouse and Energy Reporting Regulations 2008* (the NGER Regulations); and
- the *National Greenhouse and Energy Reporting (Measurement) Determination 2008* (the Measurement Determination).

The NGER Scheme is regularly reviewed by the Department for opportunities to improve the accuracy of estimates while being cognisant of reporting burden. In June 2023, amendments were made to the Measurement Determination. [Public consultation – www.consult.dccceew.gov.au/2023-nger-scheme-proposed-updates](http://www.consult.dccceew.gov.au/2023-nger-scheme-proposed-updates) on those amendments to the Measurement Determination took place from 3 April 2023 to 28 April 2023.

## **Legislative Authority**

The Measurement Determination was made under subsection 10(3) of the Act, which provides for the Minister to determine methods, or criteria for methods, for the measurement of (a) greenhouse gas emissions; (b) the production of energy; and (c) the consumption of energy. It provides the technical detail of methods for the estimation of greenhouse gas emissions and the production and consumption of energy within the NGER Scheme.

The *National Greenhouse and Energy Reporting (Measurement) Amendment (2023 Update No.2) Determination 2023* (the Technical Amendment Determination), which amends the Measurement Determination, is made under subsection 10(3) of the Act and subsection 33(3) of the *Acts Interpretation Act 1901*. Under subsection 33(3) of the *Acts Interpretation Act 1901*, where an Act confers a power to make, grant or issue any instrument of a legislative character, the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument.

The Technical Amendment Determination is a legislative instrument for the purposes of the *Legislation Act 2003*. There are no statutory preconditions that must be satisfied for the Technical Amendment Determination to be lawfully made.

### **Purpose and operation**

The purpose of the Technical Amendment Determination is to make a technical update to the default collection efficiency limit in the methods used to estimate emissions from landfills. An overview of amendments made by the Technical Amendment Determination is provided below.

#### Technical Update to Methods 1 and 2 for the estimation of methane emissions released from landfills (other than from flaring of methane)

Part 5.2 of the Measurement Determination provides methods for estimating emissions from the decomposition of organic material in landfill and in biological treatment of solid waste.

Subsection 5.15C as amended by the *National Greenhouse and Energy Reporting (Measurement) Amendment (2023 Update) Determination 2023* (the Update Determination) provides for the calculation of the maximum reportable collection efficiency for a landfill by reference to four categories of landfill management techniques. In order of increasing effectiveness, the categories are A2 (which represents areas without active gas collection and is assigned a maximum collection efficiency of 0%), A3 (which represents areas with daily soil cover and active gas collection and is assigned a maximum collection efficiency of 60%), A4 (which broadly represents areas with intermediate cover and is assigned a collection efficiency of 75%) and A5 (which broadly represents areas with final cover and is assigned a collection efficiency of 95%).

Subsection 5.15C(3) as amended by the Update Determination imposes a default collection efficiency of 60% when a landfill operator is unable to specify the areas for the factors A2, A3, A4 and A5 in subsection 5.15C(1). However, further consultation with affected stakeholders indicated that the 60% maximum default collection efficiency based on the A3 management technique does not reflect industry practice for a whole landfill site and as such has the potential to disadvantage landfill operators that are unable to utilise the area-based approach. Further, as the volume of gas captured must be directly measured, the use of the default maximum collection efficiency is only applicable in those cases where the estimated collection efficiency exceeds the default.

Item 1 of the Technical Amendment Determination amends the maximum default collection efficiency limit in subsection 5.15C(3), reverting it back to 75%. This amendment will ensure that landfill operators who are unable to apply the area-based approach will be able to use a default maximum collection efficiency of 75% and will avoid an unintended increase in reported emissions due to the practicalities of applying the new requirements.

The Technical Amendment Determination will commence the day after the instrument is registered and apply to the 2023-24 and subsequent financial years. It will affect NGER Scheme reports to be submitted by corporations by 31 October 2024.

The Technical Amendment Determination will have a limited retrospective application under section 12(2) of the *Legislation Act 2003*, as it will be registered after the start of the financial year to which it applies. As a result, for the relevant period of the 2023-24 financial year, the Technical Amendment Determination will not apply to the extent that its retrospective commencement would disadvantage a person or impose liabilities on a person in respect of anything done or omitted to be done before the Technical Amendment Determination was registered. It is not anticipated that the Technical Amendment Determination will disadvantage any person, and it is therefore unnecessary for any steps to be taken to avoid any such disadvantage.

Further details of the Technical Amendment Determination are outlined in [Attachment A](#).

A statement of the Technical Amendment Determination's compatibility with human rights is set out in [Attachment B](#).

### **Regulatory Impact**

The Technical Amendment Determination makes a technical correction to amendments made by the the Update Determination and does not change its intended substantive effect.

The regulatory impacts of the Update Determination were assessed as not requiring a Regulation Impact Statement by the Office of Impact Assessment (ref OIA23-04928).

### **Consultation**

The Department conducted targeted consultation on the Technical Amendment Determination with affected stakeholders from 12 to 19 July 2023 and from 4 to 16 August 2023. All stakeholders that were involved in the [public consultation](#) – [www.consult.dcceew.gov.au/2023-nger-scheme-proposed-updates](http://www.consult.dcceew.gov.au/2023-nger-scheme-proposed-updates) on the Update Determination in April 2023 in relation to landfill amendments were informed of the proposed amendment and invited to comment. These stakeholders included landfill operators, operators of landfill gas collection companies, and representative landfill industry bodies, all of whom had relevant expertise. Three responses were received, all in support of the Technical Amendment Determination.

## ATTACHMENT A

### *National Greenhouse and Energy Reporting (Measurement) Amendment (2023 Update No.2) Determination 2023*

#### Section 1 – Name of Determination

This section provides that the title of the Instrument is the *National Energy Reporting (Measurement) Amendment (2023 Update No.2) Determination 2023*.

#### Section 2 – Commencement

This section provides for the amendments to commence the day after the instrument is registered.

#### Section 3 – Authority

This section outlines that the Technical Amendment Determination is made under subsection 10(3) of the Act. The power to make legislative instruments under this subsection includes the power to amend or revoke instruments that have already been made, with any doubt about this resolved by subsection 33(3) of the *Acts Interpretation Act 1901*.

#### Section 4 – Schedules

The amendments to the Measurement Determination are outlined at Schedule 1.

## **Schedule 1 – Amendments**

<b>Item</b>	<b>Item name</b>	<b>Description of Amendment</b>
1.	Subsection 5.15C(3)	Repeals and replaces subsection 5.15C(3) to update the default collection efficiency limit applicable where a landfill operator is unable to specify the areas to which different categories of management techniques are applied. The new default collection efficiency limit is 75%.
2.	After section 9.16	<p>Adds a new section 9.17 to Chapter 9 (Application and transitional provisions). New section 9.17 provides that the amendment made by the Technical Amendment Determination applies in relation to the financial year starting on 1 July 2023 and later financial years.</p> <p>NGER Scheme reports for the financial year starting on 1 July 2023 are due to be submitted to the Clean Energy Regulator by 31 October 2024 (NGER Act sections 19(6)(d), 22G(2)(d), 22X(2)(d), 22XC(2)(c)). The Technical Amendment Determination has been developed in consultation with affected entities reporting under the NGER Scheme. The Technical Amendment Determination is necessary to ensure the consistency of emissions reported in the NGER Scheme and it is not anticipated that it will disadvantage any person.</p>

## **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 (Measurement) Amendment (2023 Update No. 2) Determination 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 *National Greenhouse and Energy Reporting (Measurement) Amendment (2023 Update No.2) Determination 2023* makes a minor technical amendment to the *National Greenhouse and Energy Reporting (Measurement) Determination 2008* in order to:

- Make a technical update to the default collection efficiency limit in the methods used to estimate emissions from landfills.

#### **Human rights implications**

This Legislative Instrument does not engage any of the applicable human 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**