

EXPLANATORY STATEMENT

Issued by the authority of the Emissions Reduction Assurance Committee

Carbon Credits (Carbon Farming Initiative) Act 2011

Carbon Credits (Carbon Farming Initiative—Beef Cattle Herd Management—Application Suspension) Order 2024

Legislative Authority

Subsection 27A(1) of the *Carbon Credits (Carbon Farming Initiative) Act 2011* (the Act) provides that the Emissions Reduction Assurance Committee (the Committee) may, by legislative instrument, order the suspension of the processing of applications for declarations of eligible offsets projects that are covered by a specified methodology determination.

Subsection 33(3) of the *Acts Interpretation Act 1901* provides that, where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character (including rules, regulations or by-laws), 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.

Purpose

The purpose of the *Carbon Credits (Carbon Farming Initiative—Beef Cattle Herd Management—Application Suspension) Order 2024* (the Order) is to suspend the processing of new applications under section 22 of the Act for the declaration of eligible offsets projects that would be covered by the *Carbon Credits (Carbon Farming Initiative - Beef Cattle Herd Management) Methodology Determination 2015* (the Determination). The Clean Energy Regulator (Regulator) will not be able to consider, or make a decision, on applications that are made under section 22 of the Act during the specified period of the Order. This prevents the registration of new eligible offsets projects covered by the Determination.

Background

The Act enables the crediting of greenhouse gas abatement in the land sector. Greenhouse gas abatement is achieved by either reducing or avoiding emissions, or by removing carbon from the atmosphere and storing it in soil or trees. Abatement activities are undertaken as offsets projects and must be declared as eligible offsets projects to receive the benefit of the Australian Carbon Credit Unit (ACCU) scheme. A person may apply to the Regulator under section 22 of the Act for the declaration of a planned offsets project as an eligible offsets project. After consideration, the Regulator may then, under subsection 27(2) of the Act, declare that the offsets project is an eligible offsets project for the purposes of the Act. Before declaring the project as an eligible offsets project, the Regulator must also be satisfied that the project is covered by a methodology determination and meets certain requirements set out in the methodology determination.

Methodology determinations are made under subsection 106(1) of the Act and set out the requirements that must be met for specified kinds of offsets projects to be eligible offsets projects. Subsection 106(4AA) provides that methodology determinations can only be made where the Minister is satisfied that the determination complies with the offsets integrity standards (which are set out in section 133 of the Act). In accordance with subsection 106(10), the Minister must request the Committee to advise the Minister about whether the Minister should make the determination.

The Committee is an independent expert panel established under the Act to, amongst other functions, advise the Minister about matters that relate to offsets projects. The Committee must not make an order under subsection 27A(1) unless the Committee is satisfied that there is reasonable evidence that a specified methodology determination does not comply with one or more of the offsets integrity standards. In this case, the Committee is satisfied that there is reasonable evidence that the Determination does not comply with the conservativeness offset integrity standard set out in paragraph 133(1)(g) of the Act.

The Committee informed the Minister of the Committee's proposal to make the Order on 6 December 2024, in accordance with subsection 27A(4) of the Act.

The Order suspends the consideration of, and the making of decisions on, new applications for eligible offsets projects that are covered by the Determination during a specified period, ensuring that emissions reductions from eligible offsets projects are genuine, real, and additional to business as usual.

Impact and Effect

The Order prevents the Regulator from considering or making decisions on project applications that relate to the Determination and that are submitted within the specified period of the Order. This has the effect of maintaining integrity of the ACCU scheme as the Committee is satisfied there is reasonable evidence the Determination does not comply with one or more of the offsets integrity standards.

The Order will be repealed at the same time the Determination ceases to be in force, meaning there will be no consideration of, or the making of decisions on, future applications for projects that relate to the Determination.

Consultation

No consultation was carried out for the Order itself. Stakeholder consultation was sought during the periodic review of the Determination carried out between April 2022 and November 2024. This included public consultation with a discussion paper in addition to workshops and bilateral meetings with industry representatives and independent experts. An independent technical report was completed by industry experts on the impacts of projects under the Determination, including whether the Determination was compliant with the offset integrity standards. Key feedback included that:

- it was unclear if practices under the Determination were meeting the additionality offsets integrity standard in paragraph 133(1)(a) of the Act; and
- the conservativeness factor for the Determination is likely to be inadequate due to the impact of seasonal variation on a herd's emissions intensity, meaning that the

Determination no longer meets the conservativeness offsets integrity standard in paragraph 133(1)(g) of the Act.

This consultation informed the Committee's decision to make an order under section 27A(1).

The Office of Impact Assessment has advised that no Regulatory Impact Statement is required for this instrument.¹

Details/Operation

The Order is a legislative instrument for the purposes of the *Legislation Act 2003* (Legislation Act) and is not exempt from sunseting or disallowance.

The Order came into effect the day after it was registered on the Federal Register of Legislation. The Order will self-repeal on 30 September 2025 to align with the Determination ceasing to be in force.

Details of the Amendment Instrument are set out in **Attachment A**.

Other

The Order is compatible with the human rights and freedoms recognised or declared under section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. A full statement of compatibility is set out in **Attachment B**.

¹ Office of Impact Assessment reference: OIA24-08736

Details of the Carbon Credits (Carbon Farming Initiative—Beef Cattle Herd Management—Application Suspension) Order 2024

Section 1 – Name

This section provides that the name of the legislative instrument is the *Carbon Credits (Carbon Farming Initiative—Beef Cattle Herd Management—Application Suspension) Order 2024* (Order).

Section 2 – Commencement

This section provides that the Order commences on the day after registration on the Federal Register of Legislation.

Section 3 – Authority

This section provides that the Order is made under subsection 27A(1) of the *Carbon Credits (Carbon Farming Initiative) Act 2011* and subsection 33(3) of the *Acts Interpretation Act 1901*.

Section 4 – Definitions

This section provides the definitions of certain terms used in the Order, including “Act”, “specified methodology determination” and “specified period”.

Section 5 – Specified period

This section provides that the “specified period” referred to in the order is the period between the Order commencing and 30 September 2025.

Section 6 – Suspension of processing of applications for declarations of eligible offsets projects

This section provides that the Regulator must not consider an application, or make a decision on an application, made under section 22 of the Act during the specified period that relates to an offsets project covered by the specified methodology determination.

Section 7 – Repeal

This section provides that the Order will self-repeal on 30 September 2025.

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—Beef Cattle Herd Management—
Application Suspension) Order 2024**

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 purpose of the *Carbon Credits (Carbon Farming Initiative—Beef Cattle Herd Management—Application Suspension) Order 2024* (the order) is to suspend the processing of new applications under section 22 of the *Carbon Credits (Carbon Farming Initiative) Act 2011* (the Act) for the declaration of eligible offsets projects that would be covered by the *Carbon Credits (Carbon Farming Initiative - Beef Cattle Herd Management) Methodology Determination 2015* (the Determination). This means the Clean Energy Regulator (Regulator) will not be able to consider, or make a decision on, applications that are made under section 22 of the Act during the specified period of the order. This prevents the registration of new eligible offsets projects covered by the Determination.

The order ensures that emissions reductions from eligible offsets projects covered by the Determination are genuine, real, and additional to business as usual.

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.

Karen Hussey
Chair of the Emissions Reduction Assurance Committee