EXPLANATORY STATEMENT

Carbon Credits (Carbon Farming Initiative) Act 2011

Carbon Credits (Carbon Farming Initiative—Facilities and Minor Corrections) Methodology Determination Variation 2016

Purpose

The *Carbon Credits (Carbon Farming Initiative—Facilities and Minor Corrections) Methodology Determination Variation 2016* (the Variation) primarily amends the *Carbon Credits (Carbon Farming Initiative—Facilities) Methodology Determination 2015* (the Facilities Determination).

The Variation implements a number of changes designed to improve the administration, workability and integrity of the Facilities Determination. The changes redefine the baseline period. They clarify and redefine when eligibility requirements relating to the baseline and subsequent periods need to be met. They also clarify the approach for calculating abatement from generating units that export electricity from a facility. A number of small corrections have also been made.

The Variation also makes minor amendments to the *Carbon Credits (Carbon Farming Initiative—Estimating Sequestration of Carbon in Soil using Default Values) Methodology Determination 2015* (the Soil Carbon Determination), the *Carbon Credits (Carbon Farming Initiative—Commercial and Public Lighting) Methodology Determination 2015* (the Lighting Determination), and the *Carbon Credits (Carbon Farming Initiative—High Efficiency Commercial Appliances) Methodology Determination 2015* (the Appliances Determination).These minor amendments improve definitional clarity (consistent with current regulatory practice) and implement minor corrections.

Legislative provisions

The Determinations were made under subsection 106(1) of the *Carbon Credits (Carbon Farming Initiative) Act 2011* (the Act).

The Variation amends the Determinations, and is made under subsection 114(1) of the Act, which empowers the Minister to vary, by legislative instrument, a methodology determination.

Background

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 from the atmosphere and storing it in soil or trees.

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, by legislative instrument, a methodology determination. The purpose of a methodology determination is to establish procedures for measuring abatement (emissions avoidance or sequestration) from eligible projects, and rules for monitoring, record keeping and reporting. These determinations help ensure that emissions reductions are genuine—that they are both real and additional to business as usual.

The Facilities Determination was made on 24 August 2015, and sets out the detailed rules for implementing projects at facilities reporting under the National Greenhouse and Energy Reporting (NGER) scheme.

The Soil Carbon Determination was made on 18 July 2015, and sets out the detailed rules for implementing projects that sequester carbon in soil under pasture, crops or mixed farming systems.

The Lighting Determination was made on 25 June 2015, and sets out the detailed rules for implementing lighting upgrade projects in commercial buildings and public areas.

The Appliances Determination was made on 19 November 2015, and sets out the detailed rules for implementing projects that install high efficiency commercial appliances (including air conditioners, chillers, refrigerated display cabinets, and close control air conditioners) in commercial operations.

Operation

The Variation amends the following:

- sections 5, 11, 12, 15, 16, 17, 18, 26, 27, 56, 59, 66, 69 and 78 (including the addition of a new section 65A) of the Facilities Determination;
- section 31 of the Soil Carbon Determination;
- sections 5, 11, 23, 24, 30 and Schedule 3 of the Lighting Determination; and
- section 16 of the Appliances Determination.

The Variation does not affect projects that are already declared eligible under, and using, the existing Determinations. Even after a determination has been varied, a project that was declared as an eligible offsets project before the variation can continue to use the determination in the form it was at the time the project's crediting period starts, under section 126 of the Act. The project proponent may apply to the Clean Energy Regulator (the Regulator) for approval to move to the varied determination under section 128 of the Act. All eligible offsets projects approved after the commencement of the Variation will need to comply with the Determination as varied by the Variation, even if the applications were submitted before the Variation commenced.

Public consultation

The Variation has been developed by the Department of the Environment.

The exposure draft of the Variation as it relates to the Facilities Determination was published on the Department's website for public consultation from 8 December 2015 to 22 December 2015. Stakeholders and members of the public who asked to be included on the Emissions Reduction Fund mailing list were notified of the public consultation period. The Technical Working Group involved in the development of the Determination were also notified of the public consultation period. Two submissions were received. Details of non-confidential submissions are provided on the Department of the Environment website, www.environment.gov.au.

The amendments under the Variation that relate to the Soil Carbon, Lighting and Appliances Determinations are of a minor nature and reflect existing regulatory arrangements. As such, subsection 114(9) of the Act provides that the advice and consultation processes in subsections 114(6), (7), (7B) and (8) are not applicable to those amendments. Public consultation was considered unnecessary as the amendments are of a minor or machinery nature and do not substantially alter existing arrangements. The Department sought feedback on the text of the amendments from the Clean Energy Regulator and the Lighting Council Australia (peak body for Australia's lighting industry) to ensure they worked effectively and were minor in nature. This limited consultation was considered appropriate for the type of amendments being considered.

Determination details

Details of the Variation are at Attachment A. Numbered sections and items in this explanatory statement align with the relevant sections and items of the Variation and the relevant Schedules. The definition of terms in bold italics can be found in the Variation or the Determinations.

For the purpose of subsections 114(2), (2A) and (7B) of the Act, in varying a methodology determination the Minister must have regard to, and agree with, the advice of the Emissions Reduction Assurance Committee (ERAC) that the varied methodology determination complies with the offsets integrity standards and that the varied methodology determination should be made. The Minister must be satisfied that the carbon abatement used in ascertaining the carbon dioxide equivalent net abatement amount for a project is eligible carbon abatement from the project. The Minister also must have regard to whether any adverse environmental economic or social impacts are likely to arise from the carrying out of the kind of project to which the varied methodology determination applies and other relevant considerations. Subsection 114(9) prescribes that the ERAC advice requirements do not apply to amendments if they are of a minor nature, as is the case with the amendments in Schedules 2, 3 and 4.

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

Details of the Variation

1 Name

Section 1 sets out the full name of the Variation, which is the *Carbon Credits (Carbon Farming Initiative—Facilities and Minor Corrections) Methodology Determination Variation 2016.*

2 Commencement

Section 2 provides that the Variation commences on the day after it is registered on the Federal Register of Legislation. Existing projects whose crediting period has begun are not impacted by the Variation because of section 126 of the Act but may apply for the varied determination to apply to their projects under section 128 of the Act.

3 Authority

Section 3 provides that the Variation is made under subsection 114(1) of the Act.

4 Amendment of methodology determination

Section 4 provides for the amendment of the methodology determinations in each of the Schedules such that the:

- *Carbon Credits (Carbon Farming Initiative—Facilities) Methodology Determination 2015*
- *Carbon Credits (Carbon Farming Initiative—Estimating Sequestration of Carbon in Soil Using Default Values) Methodology Determination 2015*
- *Carbon Credits (Carbon Farming Initiative—Commercial and Public Lighting) Methodology Determination 2015*
- *Carbon Credits (Carbon Farming Initiative—High Efficiency Commercial Appliances) Methodology Determination 2015*

are amended as set out in Schedules 1 to 4 of the Variation.

Schedule 1

Amendments of the *Carbon Credits (Carbon Farming Initiative—Facilities) Methodology Determination 2015*

[1] Section 5 (definition of the ***baseline period***)

Section 5 lists definitions used in the Determination. Item [1] amends the definition of the ***baseline period*** to become the four ***NGER reporting years*** prior to the NGER reporting year in which the project is declared as an eligible offsets project, and any subsequent NGER reporting years preceding the NGER reporting year in which project abatement activities commence. For facilities that meet the ***substitute newness requirement*** under subsection 19(3) of the Determination and have begun to implement project activities, the baseline period is the four NGER reporting years preceding the NGER reporting year in which the first abatement activity is implemented.

The intention of the Determination is for the baseline period to reflect normal operating conditions at a facility. The Determination previously defined the baseline period as the four NGER reporting years preceding the implementation of project abatement activities. As drafted, up to three of the four years in the baseline period could occur after project declaration. This could occur if the crediting period is delayed by 18 months (as allowed by section 69 of the Act) and project activities do not commence until just before the first offsets report is submitted (section 76 of the Act requires the first offsets report to be a maximum of 2 years after the start of the crediting period).

Project activities must commence before the end of the reporting period covered by the first offsets report because the initial audit must demonstrate that a project has been implemented in accordance with the relevant Determination (see section 74 of the *Carbon Credits (Carbon Farming Initiative) Rule 2015)*. The project will not be eligible if project activities have not commenced by the time of this audit.

For projects that meet the ***substitute newness requirement*** under subsection 19(3) of the Determination and have begun to implement project activities before being declared an eligible offsets project, the baseline period remains the four NGER reporting years prior to the implementation of project activities. It should be noted that only a very limited number of facilities will potentially be able to meet this requirement, and after 1 July 2016 no facility will meet the requirement.

The amendment ensures the baseline period reflects conditions that existed at a facility prior to an application for an offsets project, and that any changes occurring before the project activities begin to be implemented are also reflected in the baseline. This maintains the integrity of the Determination to credit genuine abatement.

[2] Section 5 (definition of ***essential component***)

Item [2] amends the definition of ***essential component*** in relation to a generating unit so that it means a component of a generating unit, or equipment related to the generating unit at the facility, that is necessary for the generating unit to generate electricity.

This change has been made to clarify what equipment, if replaced or added, would result in a generating unit being treated as a new generating unit for the purpose of abatement calculations. The concept of an essential component is used in the definitions of ***existing generating unit***, ***new generating unit*** and ***replaced generating unit.***

Subparagraph (a) of the new definition stipulates that an essential component in relation to a generating unit is a component that is necessary for the generating unit to generate electricity. This provides a test for proponents to apply when installing a new component at a facility to determine if it will be considered an essential component. For a component to be considered essential, it must be the case that the generating unit would not physically be able to generate electricity without it.

The policy intent of the essential component concept is to capture components that enable electricity to physically be produced on an ongoing sustainable basis at the facility. Essential components would therefore include major components at the facility such as the boiler, turbine and generator, and their constituent components (such as turbine blades), without which it would not be physically possible to produce electricity at the facility. An example of a component that would not be considered necessary would be new equipment installed to further prepare or dry coal before it is combusted in the boiler.

The change extends the definition of essential component to cover equipment that was defined as ***shared equipment*** under the Determination. The concept of shared equipment was previously used to determine whether any generating units would be considered as new when new shared equipment is added or replaced. The revised approach removes the shared equipment definition. Changes to the essential component definition allow multiple generating units to be considered new or replaced when an essential component used by each of them has been added or replaced. This change means that all equipment at the facility is treated consistently, whether it is a part of a single generating unit or shared between multiple generating units.

[3] Section 5 (definition of ***existing generating unit***)

Under the previous Determination, a generating unit is classified as an ***existing generating unit*** in an NGER reporting year if it generated electricity in the baseline year and it generates electricity in the NGER reporting year. Any addition or replacement of an essential component after the baseline year would have resulted in the generating unit being classified as a ***new generating unit*** instead.

Item [3] amends the definition of existing generating unit to allow a generating unit to add or replace essential components after the baseline year, and still be classified as an existing generating unit if the impact of all essential components added or replaced since the baseline year would not have a ***material effect*** on project abatement in the NGER reporting year. This test takes account of the cumulative impact of all of the changes made since the baseline year.

The purpose of this change is to ensure that minor changes to a generating unit, particularly those that do not materially affect the emissions intensity of the generating unit, do not require the generating unit to be classified as a new generating unit.

[4] Section 5 (definition of ***major disruption to production***)

Item [4] amends the definition of ***major disruption to production*** to clarify that where the disruption year is the first year of the baseline period, project proponents are not required to test whether there has been a change in the emissions intensity of a production variable of 10 per cent or more compared with the preceding NGER reporting year. Similarly, where the disruption year is the last year of the baseline period, project proponents are not required to test whether there has been a change in the emissions intensity of a production variable of 10 per cent or more compared with the following NGER reporting year.

As previously drafted, if the disruption occurred in the first NGER reporting year of the baseline period and emissions intensity differed by more than 10 per cent compared with a year before the baseline period began, then a facility would be ineligible to use the method. Similarly, if the disruption occurred during the final NGER reporting year of the baseline period and emissions intensity decreased in the following year because of project abatement activities, then the facility could become ineligible. By amending a major disruption to production so that it is not triggered by factors outside of the project's baseline period, the Variation ensures facilities that experience a disruption that does not impact the integrity of their baseline data are not made ineligible.

[5] Section 5 (definition of ***new generating unit***)

Item [5] amends the definition of ***new generating unit*** to clarify the circumstances when a generating unit should be treated as new for the purposes of abatement calculations under the Determination. There are two circumstances where generating unit is classified as new in an NGER reporting year.

Firstly, if the generating unit was not used to generate electricity during the baseline year but is used to generate electricity in the NGER reporting year, then it is classified as a new generating unit for the NGER reporting year. It is not relevant to this definition when the generating unit was installed. The generating unit may have been installed before, during or after the baseline year. It is only relevant whether or not any electricity was generated by the unit during the baseline year.

Secondly, a generating unit that generated electricity during both the baseline year and the NGER reporting year may still be classified as new if it has added or replaced essential components that, taken together, have a material impact on project abatement in the NGER reporting year. Note that this second circumstance matches the definition of ***replaced generating unit*** (see item [7]). This means that a generating unit that is classified as a new generating unit because it has added or replaced an essential component, would also be treated as being a replaced generating unit for the purpose of the abatement calculations.

The reason the Determination treats a generating unit as new when an essential component is replaced reflects the intent not to credit the replacement of components that may extend the operating life of emissions-intensive generating units, unless the upgraded generating unit has an emissions intensity that is lower than the grid average.

[6] Section 5 (definition of ***original output variable***)

Item [6] amends the Determination by introducing a definition for an ***original output variable***. An original output variable for a facility is an output variable that was produced or processed by the facility in the first NGER reporting year of the baseline period.

This new definition is used in section 16. The definition has been introduced to simplify that section by distinguishing between original output variables produced at the facility in the first NGER reporting year of the baseline period, and output variables subsequently added later in the baseline period. Original output variables can be production variables, either on their own or in combination with other similar output variables. Output variables that commence production after the first NGER reporting year during the baseline period can only be part of a production variable if they are similar and can be added to a production variable that includes an original output variable – see section 16(2). This is intended to ensure that each production variable has sufficiently representative data during the baseline period.

[7] Section 5 (definition of ***replaced generating unit***)

Item [7] amends the definition of ***replaced generating unit*** to clarify the circumstances when a generating unit should be treated as replaced for the purposes of abatement calculations under the Determination. There are two circumstances where a generating unit is classified as replaced in an NGER reporting year.

Firstly, if the generating unit was used to generate electricity during the baseline year but is not used to generate electricity in the NGER reporting year, then it is classified as a replaced generating unit for the NGER reporting year. It is not relevant to this definition whether the generating unit equipment has been removed from the facility, or whether a new generating unit has been built in its place. It is only relevant whether or not any electricity was generated by the unit during the NGER reporting year. Further, if a replaced generating unit resumes generating electricity in a later NGER reporting year, it would no longer be classified as replaced.

Secondly, a generating unit that generated electricity during both the baseline year and the NGER reporting year may still be classified as replaced if it has added or replaced essential components that, taken together, have a material impact on project abatement in the NGER reporting year. Note that this second circumstance matches the definition of ***new generating unit*** (see item [5]). This means that a generating unit that is classified as a replaced generating unit because it has added or replaced an essential component, would also be treated as a new generating unit for the purpose of the abatement calculations.

[8] Section 5 (definition of ***shared equipment***)

Item [8] removes the definition of ***shared equipment*** from the Determination. The previous Determination treated essential components that are part of a generating unit differently from equipment that is shared by multiple generating units. The Variation amends this approach by extending the definition of ***essential component*** such that it now covers equipment that is shared by multiple generating units. As such, the definition of shared equipment is no longer required.

[9] Paragraph 11(1)(a)

Section 11 describes what the Determination means by a ***significant expansion***. Item [9] amends paragraph 11(1)(a) to refer to new equipment used to process a production variable instead of an output variable.

This change is explained further in the explanation for item [11] of this Variation.

[10] Paragraph 11(1)(b)

Section 11 describes what the Determination means by a ***significant expansion***. Item [10] repeals paragraph 11(1)(b).

This paragraph is not required where a significant expansion relates to a production variable instead of an output variable.

[11] Paragraph 11(1)(c)

Section 11 describes what the Determination means by a ***significant expansion***. Item [11] amends paragraph 11(1)(c) to so that calculations of whether there has been a 20 per cent increase in productive capacity relate to the equipment used to process a ***production variable*** instead of an ***output variable***.

The Variation has been made to ensure that the significant expansion provision is not triggered when a new output is added, and is only triggered when the facility's capacity to produce or process a production variable has increased by 20 per cent or more since the first year of the baseline period. Note that a single production variable could be an input variable, an intermediate product, or could be made up of multiple output variables. Expanding the productive capacity of a single output variable should not be considered a significant expansion unless it results in a 20 per cent or more increase for the productive capacity of the production variable.

Using production variables instead of output variables means that a significant expansion relates to the variables that are used to measure the emissions intensity of a facility. This is consistent with the Determination's focus on crediting reductions in emissions intensity, and with the intent of the ***major change*** provisions to address changes at a facility that affect the accuracy of project abatement measurements.

[12] Subsection 11(3)

Subsection 11(3) of the Determination specifies what equipment does not need to be included when calculating whether there has been a 20 per cent or greater increases in productive capacity. Item [12] amends subsection 11(3) to clarify that equipment not used in earliest year of the baseline period and since decommissioned should not be included when calculating the maximum productive capacity of equipment used to process a production variable.

The Determination previously referred to the baseline year, which may have adversely affected facilities that replace equipment during the baseline year without increasing productive capacity. The Variation addresses this issue by maintaining consistency with the rest of Section 11, which refers to the first year of the baseline period. The Variation now

refers to a production variable instead of output variable, which is consistent with the change to Section 11 outlined in item [11].

[13] Section 12

Section 12 describes what the Determination means by a ***significant output variable change***. Item [13] repeals the section and redefines the concept of significant output variable change to only apply to the project's baseline period.

The previous meaning of a significant output variable change that applied outside of the baseline period made a facility ineligible under the Determination when they introduced a new output variable that could not be added to an existing production variable, which also had a ***material effect*** on project abatement. This was designed to ensure genuine abatement by not crediting a facility for just making a switch to produce a less emissions intensive output.

However, the addition of a new output variable outside the baseline period that is not added to a production variable will act to increase rather than decrease the emissions intensity of the facility. As such, a proponent cannot gain extra abatement in such circumstances and so should not be subject to the project being declared ineligible. A significant output variable change therefore no longer applies outside of the baseline period, so that a project does not become ineligible for an action that reduces the facility's potential for abatement.

The new meaning of a ***significant output variable change*** that applies during the baseline period applies to ***discrete*** output variables. An output variable is discrete if it is not a production variable, and is not incorporated into a production variable in accordance with subsection 16(2), or represented by a production variable in accordance with section 17.

A significant output variable change will now occur at a facility when, in any NGER reporting year in the baseline period, the emissions associated with production of all discrete output variables amount to 5% or more of the total emissions of the facility.

[14] At the end of paragraph 15(2)(b)

Subsection 15(2) of the Determination sets out a list of requirements facilities must meet to be eligible for a facilities project. Item [14] amends paragraph 15(2)(b) of the Determination to clarify when NGER reports about the project's baseline period are required to be provided to the Regulator. The Variation requires that NGER reports about the operation of the facility during the project's baseline period must be provided to the Regulator no later than the first 31 October after the end of the project's baseline period.

The Determination requires project proponents to have NGER reports about the operation of the facility for the project's baseline period, which for most projects will be the four consecutive NGER reporting years immediately preceding the NGER reporting year in which the project is declared an eligible offsets project, and any subsequent NGER reporting years preceding the NGER reporting year in which the first project abatement activity begins to be implemented. The Determination previously required that proponents have the data at the time of the declaration of eligibility, which is not possible if the commencement of the project is in a future NGER reporting year after declaration. The amendment means that proponents

now need to have submitted the NGER reports no later than the first 31 October after the end of the project's baseline period.

The Variation does not change the requirement that facilities must collect relevant data for each NGER reporting year in the baseline period. It only affects when the data must be submitted to the Regulator for the facility to meet the eligibility requirements under the Determination.

[15] Paragraphs 15(2)(c) and 15(2)(ca)

Item [15] amends paragraph 15(2)(c) of the Determination, and adds paragraph 15(2)(ca) relating to the facility's production variables.

Paragraph 15(2)(c) has been amended to clarify that the facility must have one or more production variables at the end of the project's baseline period. This clarification is necessary because, for many projects, the baseline period may continue after the declaration date of the project. So even if the facility's production variables meet the relevant eligibility requirements at the time of declaration, they still must meet the eligibility requirements at the end of the baseline period.

Paragraph 15(2)(ca) sets out an eligibility requirement that proponents provide information which demonstrates that all of the facility's production variables were used or produced at the facility in every NGER reporting year of the project's baseline period. Because it is possible for the baseline period to extend past the date of project declaration, this information needs to be provided to the Regulator no later than with the first offsets report. If the Regulator becomes aware of information, before being provided with the first offsets report, that this eligibility requirement cannot be met then the project may be found ineligible. For example, if information provided in response to the Regulator's request for further information under section 24 of the Act indicated that the project cannot meet this eligibility requirement, the Regulator may reject the application for declaration.

The Determination previously did not make it explicit that all production variables must be used or produced in every year of the baseline period. This eligibility requirement is intended to ensure that baselines for each production variable are informed by sufficiently representative data.

[16] Paragraph 15(2)(d)

Item [16] amends paragraph 15(2)(d) of the Determination to clarify when a major change during the baseline period is considered to have occurred. The Variation clarifies that a facility is not eligible for a facilities project if it underwent a major change during the baseline period before project application, or undergoes a major change at any time during the remainder of the baseline period.

[17] Paragraph 15(2)(e)

Item [17] amends paragraph 15(2)(e) of the Determination to clarify when project proponents are required to have NGER facility level emissions data and production variable data for the baseline period. The Variation requires that a project proponent has relevant NGER facility level emissions data and production variable data for each NGER reporting year in the baseline period at the time of preparation of the first offsets report.

The Variation does not change the requirement that facilities must collect relevant data for each NGER reporting year in the baseline period. It only affects when project proponents must have this data for the facility to meet the eligibility requirements under the Determination.

[18]-[25] Section 16

Section 16 of the Determination explains how to choose output variables as production variables for a facility. The purpose of the changes described below are to clarify how output variables can be chosen as production variables, and in what circumstances similar output variables can be treated together as a single production variable. This section of the explanatory statement summarises the revised approach for choosing output variables as production variables as introduced by the Variation. The details of the individual changes are then described in the following sections of the explanatory statement for the Variation.

As mentioned above in Item [15], paragraph 15(2)(ca) clarifies that production variables must be produced in all years of the baseline period. If an output variable is produced at the facility in all years of the baseline period, it can be chosen to be a production variable on its own (subsection 16(1)).

During the baseline period, if a facility produces multiple output variables then the proponents may be able to group two or more similar output variables together to be treated as a single production variable (see subsection 16(2)). If multiple output variables are grouped together, then at least one of the output variables must have been produced in each year of the baseline period to meet the requirement in paragraph 15(2)(ca).

Any remaining output variables that are not considered part of a production variable are classed as discrete and could trigger a significant output variable change in accordance with section 12.

The following example in the table below describes the options for choosing production variables at a facility that produces three output variables (A, B and C) during the baseline period.

Example: Choosing output variables as production variables

Baseline year	1	2	3	4	Potential production variable choices			
					Option	Production variables	Number of production variables	Discrete output variables
Output variables produced	A, B	A, C	A, B, C	A, B, C	1	(A)	1	B, C
					2	(A&B)	1	C
					3	(A&C)	1	B
					4	(A), (B&C)	2	
					5	(A&B&C)	1	

In the above example, output variable A was produced in each year of the baseline period, so it can be a production variable on its own (options 1 and 4). Alternatively, A can be combined with other similar output variables into a single production variable, subject to the requirements in 16(2) (options 2, 3 and 5).

Since output variables B and C were not produced in all baseline years, they cannot be chosen to be production variables in their own right for the facility. Outputs B and C can only be part of a production variable if they meet the similar output variable requirements outlined in 16(2) (options 2 to 5). They can be combined individually, or together, with output A (options 2, 3 and 5).

Alternatively, subject to the requirements in 16(2), outputs B and C can be combined into a production variable (option 4). This can occur because in every year of the baseline period either output B or output C was produced, and output B was produced in the first year of the baseline period and is therefore an original output variable.

In option 4, which assumes output A is not being combined with the other outputs, it will have to be chosen as a second production variable for the facility.

Under options 1 to 3, output B and/or C are not part of a production variable and would be considered discrete output variables. If the emissions of all discrete output variables in any year of the baseline period are 5% or more of the total emissions of the facility, a significant output variable change is deemed to occur such that the project would be ineligible (see section 12 of the Determination).

New output variables after the baseline period

After the baseline period (see subsection 16(3)), any new output variables can be combined with existing production variables if:

- they are quantified using the same unit of measurement as an existing similar production variable; and
- the emissions intensity of the similar production variable is no more than 5 per cent greater than the emissions intensity of the new production variable.

The second condition is required to ensure that the project will not be credited with abatement just for producing a new output variable with a lower emissions intensity.

For the second condition, the measurement of the emissions intensity of the existing production variable is based on the most recent NGER reporting year in which the production variable is produced at the facility. The emissions intensity of the new variable is based on the first full NGER reporting year that the new output variable is produced at the facility. If the new output variable has not been produced for a full NGER reporting year before a comparison is made (i.e. when an offsets report is submitted), the comparison is based on a reasonable expectation of the emissions intensity of the new output variable. Once a full NGER year of data exists for the new output variable, then proponents must again check that the condition holds. If the condition no longer holds the new variable can no longer be treated as part of the similar production variable.

If a new output variable does not satisfy either of the two conditions, it is not treated as a production variable at all. There is no effect on the eligibility of the project, but the facility's potential for abatement will decrease because production of the new output variable, while increasing a facility's emissions, will not affect the crediting baseline.

[18] Paragraph 16(1)(a)

Section 16 of the Determination explains how to choose output variables as production variables for a facility. Item [18] amends paragraph 16(1)(a) to clarify that this paragraph only applies in the circumstance that the facility only has one output variable that it produces in all years of the baseline period. If this is the case, that output variable must be chosen as the only production variable for the facility.

If the facility produces multiple output variables in any year of the baseline period, then paragraph 16(1)(b) applies, subject to subsection 16(2) and section 17.

The Determination did not previously specify that the output variable needs to be produced in every year of the baseline period. The change to paragraph 16(1)(a) complements the amendment outlined in item [15], which clarifies that a production variable needs to be used or produced in every NGER reporting year of the baseline period.

[19] Paragraph 16(1)(b)

Section 16 of the Determination explains how to choose output variables as production variables for a facility. Item [19] amends paragraph 16(1)(b) to clarify that where a facility produces multiple output variables over the baseline period, project proponents should choose each ***original output variable*** to be the facility's production variables.

The Determination did not previously specify that where multiple output variables are produced at a facility over the baseline period, only the output variables that are produced in every year of the baseline period can be chosen as production variables. The change to paragraph 16(1)(b) reflects the amendment outlined in item [15], which clarifies that a production variable needs to be used or produced in every NGER reporting year of the baseline period.

[20] After subsection 16(1)

Item [20] adds subsection 16(1A) that requires project proponents to choose the facility's production variables before applying to for the project to be an eligible offsets project. This applies to choices made under subsection 16(2) or section 17. Subsection 16(2) relates to combining similar output variables into a single production variable. Section 17 relates to choosing inputs or intermediate products as production variables.

The choice of production variables must be made based on the data available at the time that the application is submitted. The choice can only be remade after the end of the baseline period in the circumstance that the original choices would not meet the requirements of subsection 16(2) or section 17. Once this choice has been remade, and included in the first offsets report, it is locked-in for the remainder of the crediting period.

The purpose of this requirement is to allow the Regulator to assess the eligibility of the chosen production variables at the time of application. However, if the data at the end of the baseline period means that the originally chosen production variables are no longer eligible, the proponents must choose new production variables. If proponents cannot choose eligible production variables at this time, then the project would not be an eligible offsets project.

[21] Heading to subsection 16(2)

Subsection 16(2) of the Determination explains how two similar output variables can be combined into a single production variable. Item [21] amends the heading to clarify that 16(2) only relates to the baseline period.

[22] After paragraph 16(2)(b)

Subsection 16(2) of the Determination explains how two similar output variables can be combined into a single production variable. Item [22] amends 16(2)(b) to clarify that at least one of the similar output variables needs to be an original output variable.

The Determination previously did not specify that one of the similar output variables needs to be an original output variable. This requirement in the Variation ensures that at least one of the similar output variables was produced in the first year of the baseline period. This follows from the requirement in paragraph 15(2)(ca) (see item [15]) for production variables to be used or produced in every NGER reporting year of the baseline period.

Where two or more similar output variables are being combined into a single production variable, at least one of those variables must have been produced in the first year of the baseline period (the original output variable(s)), and one or more of the similar output variables must be produced in every remaining year of the baseline period.

[23] Subsection 16(2)

Subsection 16(2) of the Determination explains how two similar output variables can be combined into a single production variable. Item [23] amends 16(2) to clarify that project proponents can choose two or more similar output variables to be a single production variable, instead of choosing just the original output variables to be production variables on their own.

[24] Note to subsection 16(2)

The note to subsection 16(2) of the Determination clarifies that section 16(2) can be used to combine similar original output variables together with similar non-original output variables introduced during the baseline period into a production variable. Project proponents should note that if a non-original output variable is introduced during the baseline period and cannot be added (or is not added) to an original output variable to become a production variable, it will be classed as a discrete output variable in section 12, which could trigger a significant output variable change.

Item [24] also amends the note to clarify that when similar output variables are combined into a single production variable, project proponents must also choose other non-similar output variables that meet the definition of a production variable in 16(1) to also be production variables for the facility. Item [24] amends the note to subsection 16(2) to refer to an original output variable to maintain consistency with other changes to section 16, and reflect the amendment outlined in item [15], which clarifies that a production variable needs to be used or produced in every NGER reporting year of the baseline period.

[25] Subsection 16(3)

Item [25] repeals subsection 16(3) and replaces it with subsections 16(3) and 16(4), which describe how a new output variable first produced after the facility's baseline period can be added to a production variable.

Subsection 16(3) clarifies that the new output variable can be added to a similar production variable whose emissions intensity over the most recent NGER reporting year at the time of comparison is, or is reasonably expected to be, no more than 5 per cent greater than the emissions intensity of the new output variable over the first full NGER reporting year after it is introduced. The reference to reasonable expectation has been included to account for the situation where an offsets report needs to be submitted before a full NGER reporting year of data exist for the new output variable.

Subsection 16(4) of the Variation specifies circumstances where project proponents who have combined a new output variable with a similar production variable, based on a reasonable expectation described in subsection 16(3)(d), will not be able to continue to treat a new output variable as part of a similar production variable for the remainder of the project.

The new output variable will no longer be able to be treated as part of the similar production variable if, once a full NGER reporting year of data exists for the new output variable, its average emissions intensity is less than 95 per cent of the average emissions intensity of the similar production variable in either:

- the same year, or
- the most recent NGER reporting year the similar production variable was produced prior to the introduction of the new output variable.

Subparagraph 16(4)(c)(i) relates to the situation where a new output variable is produced in the same NGER reporting year as the similar production variable. Subparagraph 16(4)(c)(ii) relates to the situation where the new output variable replaces a similar production variable that is no longer produced at the facility.

[26] Subsection 17(3)

Subsection 17(3) of the Determination specifies that where multiple inputs or intermediate products have been chosen under subsection 17(2) the project proponent must choose the one that is reasonably considered to have made the largest contribution to the facility's emissions during the baseline period to be the facility's production variable. Item [26] of the Variation corrects the tense of the word 'choose'.

[27] Paragraph 18(b) and (c)

Section 18 of the Determination lists information that must be included in the project's application under section 22 of the Act, including information about the production variables for each facility.

Item [27] amends the section because project proponents cannot be certain at the time of application whether their chosen production variables meet the requirements of sections 16 and 17. For this reason, the paragraphs 18(b) and 18(c) now refer to "intended production variables" rather than production variables. Paragraph 18(c) also notes that proponents must show that their intended production variables have been chosen in accordance with sections 16 and 17 based on the data available at the time of application.

Note that, under subsection 16(1A) (item [20]), project proponents can only remake their choice of production variables at the end of the baseline period if their original choices would no longer meet the requirements of subsection 16(2) or section 17.

Paragraph 18(ca) requires project proponents to provide an explanation of how the intended production variables would enable the requirements in paragraph 15(2)(d), that a major change did not occur at the facility during the existing baseline period, to be satisfied. Once the baseline period is complete, the project proponents will need to meet the major change requirements in 15(2)(d) for all chosen production variables for the whole baseline period.

The purpose of this provision is to help ensure at the time of application that the project is likely to be able to meet the eligibility requirements set out in the Determination. If there are problems for the project with regards to choosing production variables, or regarding a major change that may have occurred at the facility during the baseline period, it is better for proponents if these are identified at the time of application, rather than at the time of the first offsets report. When receiving this information at the application stage, the Regulator has the opportunity to identify problems with the project as early as possible. However, it is ultimately the responsibility of the project proponents to ensure that the project meets all the requirements set out in the Determination.

Project proponents should note that if, after the end of the baseline period, they cannot choose a production variable in accordance with sections 16 or 17 that meets the eligibility requirements in paragraphs 15(2)(c), 15(2)(ca) and 15(2)(d), the project will not be eligible under the Determination.

[28] Subsection 26(1)

Item [28] amends subsection 26(1) of the Determination so that total facility abatement is also subject to subsection 26(4), which the Variation adds at item [29].

[29] After subsection 26(3)

Item [29] amends the Determination by adding subsection 26(4). Subsection 26(4)(a) clarifies that, total facility abatement will be zero for an NGER reporting year for a facility included in the project, where that facility has not begun to implement any abatement activities since the end of the project baseline period.

Subsection 26(4)(b) clarifies that total facility abatement will be zero for any NGER reporting years during the baseline period.

[30] Subsection 27(4)

Item [30] amends subsection 27(4) of the Determination to specify that the onsite abatement for a facility for an NGER reporting year, and all subsequent NGER reporting years, is taken to be zero if the facility undergoes a ***significant expansion*** during either the relevant NGER reporting year, or an earlier NGER reporting year after the end of the baseline period.

The Determination previously referred to both a significant expansion and a significant output variable change in subsection 27(4). The Variation removes the reference to a significant output variable change to reflect the change outlined in item [13] of this Variation, where a significant output variable change no longer applies outside of the baseline period. The Variation also clarifies that facility abatement will be zero for an NGER reporting year and all subsequent NGER reporting years if a significant expansion occurs any time after the end of the baseline period.

[31] Section 56 (definition of $Q_{Exist,r}$)

Section 56 of the Determination outlines how to work out the emissions intensity of electricity generated using existing generating units at a facility and exported from the facility during an NGER reporting year. Item [31] corrects the definition of the term for the quantity of electricity generated using existing generating units and exported from the facility ($Q_{Exist,r}$) to refer to the NGER reporting year instead of the baseline year.

Project proponents should also note that the change to the definition of this term applies throughout the Determination's Explanatory Statement, including the list of equations in Attachment D.

[32] Subparagraph 59(3)(a)(ii)

Section 59 describes how emissions are to be apportioned to electricity generated using new or existing generating units and exported from a facility. Subparagraph 59(3)(a)(ii) makes reference emissions sources "associated with electricity generated using shared equipment". Since the definition of "shared equipment" is no longer required in the determination, item [32] amends the variation so that it refers to emissions sources "associated with electricity generated by multiple generating units."

[33] After section 65

Item [33] amends the Determination by adding section 65A, which specifies information to confirm eligibility that is required to be provided with the first offsets report.

Paragraph 65A(a) only applies if, at the end of the baseline period, project proponents choose production variables that differ from the intended production variables that were nominated at the time of application. Note that project proponents can only choose different production variables in the event that the intended production variables no longer meet the requirements of subsection 16(2) and section 17 (see subsection 16(1A) in item [20]).

If project proponents change their choice of production variables, they must submit information about the new production variables with the first offsets report. This information relates to the key substance of value of the production variables, and information that they have been chosen in accordance with section 16 or 17. Project proponents must also explain why they were required to change from their original production variables.

Paragraph 65A(b) applies to all project proponents. They must provide information that demonstrates that the facility did not undergo a major change during the project's baseline period. This can only be conclusively proven after the baseline period has concluded.

[34] Subsection 66(2)

Item [34] amends the Determination by adding paragraph 66(2)(b), which requires project proponents to provide information that demonstrates how the requirements of subsection 16(3) are satisfied when a new output variable is added to a similar production variable after the end of the baseline period.

[35] After paragraph 69(b)

Item [35] amends the Determination by adding subparagraph 69(ba), which specifies information that is required to be included in an offsets report to demonstrate for each existing generating unit at the facility used to calculate abatement that it is not a new generating unit. This change relates to changes to the definitions of ***existing generating units***, ***new generating units*** and ***replaced generating units*** made at item [3], item [5] and item [7] of this Variation.

Subparagraph 69(ba) stipulates that if abatement calculations for an NGER reporting year covered by the offsets report make reference to any existing generating units at the facility, project proponents must include in the offsets report information that demonstrates that each existing generating unit used to calculate abatement is not a new generating unit.

[36] Paragraph 78(1)(b)

Item [36] removes the reference to significant output variable change to ensure paragraph 78(1)(b) is consistent with the change outlined in item [13] of this Variation.

[37] Paragraph 78(2)

Item [37] removes the reference to significant output variable change to ensure paragraph 78(2) is consistent with the change outlined in item [13] of this Variation.

Schedule 2

Amendments of the *Carbon Credits (Carbon Farming Initiative— Estimating Sequestration of Carbon in Soil using Default Values) Methodology Determination 2015*

The variations listed below add numerical values for average soil pH, which were present in the draft determination at the time of public consultation but were erroneously deleted during the making of the instrument due to a formatting process. The pH values reflect those already in the determination at subsection 19(4).

[1] Subparagraph 31(1)(a)(i)

This item adds "5.5" into this subparagraph so that it specifies that the average soil pH value in the surface soil must be below 5.5 in order to satisfy eligibility for a soil acidity management action as part of a sustainable intensification project management activity.

[2] Subparagraph 31(1)(a)(ii)

This item adds "4.8" into this subparagraph so that it specifies that the average soil pH value in the subsoil must be below 4.8 in order to satisfy eligibility for a soil acidity management action as part of a sustainable intensification project management activity.

Schedule 3

Amendments of the *Carbon Credits (Carbon Farming Initiative—Commercial and Public Lighting) Methodology Determination 2015*

This Schedule makes minor amendments to the *Carbon Credits (Carbon Farming Initiative—Commercial and Public Lighting) Methodology Determination 2015* (the Determination) to clarify:

- the roles of licensed electricians compared to other authorised persons, such as lineworkers, involved in lighting upgrades;
- the need for control equipment to be directly connected (ie attached) to lamps listed in Schedule 3 for that Schedule to be applicable.

Both these clarifications are consistent with the Clean Energy Regulator's current regulatory guidance for the Determination available at: http://www.cleanenergyregulator.gov.au/ERF/Forms-and-resources/Regulatory-Guidance/emissions-avoidance-guidance. Amending the Determination makes the method more transparent and easy to understand for interested project proponents.

[1] Subsection 5(1)

Subsection 5(1) of the Determination defines a number terms used in the Determination.

Item [1] amends subsection 5(1) of the Determination by inserting a definition of a licensed person as a person authorised by law or other regulatory arrangements to undertake a particular kind of lighting upgrade in a State or Territory, such as a lineworker. Such authorisation may be through a licence, accreditation, registration or some other permission. The definition is used in the amendments to section 11 of the Determination.

[2] Subsection 11(2)

Subsection 11(2) requires lighting upgrades to be undertaken by, or completed under the supervision of, a licensed electrician. Item [2] amends subsection 11(2) by requiring upgrades to be undertaken or completed under the supervision of a licensed electrician only in circumstances where an upgrade, or part of it, is not required by regulation to be undertaken by a licensed person as defined in subsection 5(1). This ensures that the Determination does not imply that licensed electricians are to carry out or supervise upgrades which they are not authorised to undertake, e.g. supervise the upgrade of street lighting which is required to be undertaken by a licensed lineworker.

[3] Paragraph 11(2)(a)

When read in conjunction with the amendment in item [2], the current paragraph 11(2)(a) requires a licensed electrician or their supervisor, to provide a signed statement that he or she supervised the completion of the upgrade. By inserting the words "undertook or" after "he or she", item [3] ensures paragraph 11(2)(a) also covers circumstances where the licensed electrician or their supervisor undertook all or part of the upgrade themselves.

[4] After subsection 11(2)

Item [4] inserts a new subsection 11(2A) which replicates the requirements of current subsection 11(2) for lighting upgrades that require a licensed person to carry out all or part of the upgrade. Accordingly, in circumstances where a licensed person is required by regulation to undertake all or part of a lighting upgrade, new subsection 11(2A) requires that part of the upgrade to be undertaken by such a person and they or their supervisor must provide a signed statement confirming the following:

- that they have undertaken or supervised the completion of the upgrade;
- the date the lighting system was commissioned;
- that the area was the same size and of the same type as listed in Schedule 4 or 5 pre and post upgrade (as per paragraph 11(1)(a));
- that the system was fully operational before the upgrade (as per paragraph 11(1)(b)); and
- that all lamps, luminaires and control gear both pre and post upgrade were of a type listed in Schedule 1 (for lamps and luminaires) or Schedule 2 (for control gear) (as per paragraph 11(1)(c)).

It is possible that part of a lighting upgrade requires the statement by a licensed person or their supervisor under subsection 11(2A) and another part of the lighting upgrade requires the statement by a licensed electrician or their supervisor under subsection 11(2).

[5] Subsection 23(2) (subparagraph (b)(i) of the definition of $LCP_{B,i,j}$)

Subsection 23(2) includes the definition of $LCP_{B,i,j}$, which is a variable used in calculating the baseline energy consumption of a lamp or luminaire in a lighting system. Item [4] amends subparagraph 23(2)(b)(i) of the definition of $LCP_{B,i,j}$ to clarify that when determining the lamp circuit power for a lamp, the proponent must only consider control gear that is directly connected to the lamp (i.e. attached to the lamp) if Schedule 3 is applied.

[6] Subsection 24(2) (sub-subparagraph (b)(ii)(A) and (B) of the definition of $LCP_{P,i,j}$)

Subsection 24(2) includes the definition of $LCP_{P,i,j}$, which is a variable used in calculating the project energy consumption of a lamp or luminaire in a lighting system. Item [6] repeals and substitutes subparagraphs 24(2)(b)(ii)(A) and (B) of the definition to clarify that when determining the lamp circuit power, the proponent must only consider control gear that is directly connected to the lamp (i.e. attached to the lamp) if Schedule 3 is applied.

The equation in subsection 24(2) does not cover a lamp that is not part of a combination of lamp and directly connected control gear listed in Schedule 3; such a lamp therefore cannot be used in an upgraded lighting system. This is because under paragraph 11(1)(e) of the Determination the energy consumption of the system before and after the upgrade must be capable of being estimated in accordance with the method in Part 4 of the Determination.

[7] Paragraph 30(3)(f)

Paragraph 30(3)(f) requires that the proponent must keep the statement by a licensed electrician required under subsection 11(2) of the Determination as a record. Item [7] replaces paragraph 30(3)(f) to extend the requirement to keep record of any statements made by a licensed electrician or licensed person required under the amended subsection 11(2) or the new subsection 11(2A).

[8] After the heading to Schedule 3

Item [7] amends Schedule 3 to include a note to further remind readers of the Determination that in identifying the lamp circuit power applicable to a particular lamp and associated control gear, only control gear that is directly connected to the lamp should be considered.

As the control gear must be directly connected, for a lamp that has directly connected magnetic ballast, item 36 applies only if a voltage reduction unit is also directly connected. Otherwise if the voltage reduction unit is not directly connected, another item in the Schedule for a lamp with a directly connected magnetic ballast would apply.

Schedule 4

Amendments of the *Carbon Credits (Carbon Farming Initiative—High Efficiency Commercial Appliances) Methodology Determination 2015*

[1] Subsection 16(8)

This item replaces “less” with “more” in subsection 16(8) of the Determination. That subsection sets out requirements for the revision of the efficiency factor document used by the Determination in the calculation of abatement. Subsection 16(8) ensures that the Department must consider, at intervals of not more than 12 months, whether it would be appropriate to publish a revised version of the document. This amendment implements a minor correction in the provision to accurately reflect the policy intent, which is articulated correctly in the Explanatory Statement for the Determination.

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—Facilities and Minor Corrections) Methodology Determination Variation 2016

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—Facilities and Minor Corrections) Methodology Determination Variation 2016* (the Variation) primarily amends the *Carbon Credits (Carbon Farming Initiative—Facilities) Methodology Determination 2015* (the Facilities Determination). The Variation amends the Facilities Determination to clarify requirements relating to the project's baseline period. It also clarifies and redefines when eligibility requirements relating to the baseline and subsequent periods need to be met and clarifies the approach for calculating abatement from generating units that export electricity from a facility.

The Variation also makes minor technical amendments to the *Carbon Credits (Carbon Farming Initiative—Estimating Sequestration of Carbon in Soil using Default Values) Methodology Determination 2015,* the *Carbon Credits (Carbon Farming Initiative—Commercial and Public Lighting) Methodology Determination 2015* and the *Carbon Credits (Carbon Farming Initiative—High Efficiency Commercial Appliances) Methodology Determination 2015*.

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.