Explanatory Statement

Carbon Credits (Carbon Farming Initiative) Act 2011

Carbon Credits (Carbon Farming Initiative—Coal Mine Waste Gas) Methodology Determination Variation 2019

(Issued by the authority of the Minister for the Environment)

Purpose

The *Carbon Credits (Carbon Farming Initiative—Coal Mine Waste Gas) Methodology Determination Variation 2019* (the Variation) amends the *Carbon Credits (Carbon Farming Initiative—Coal Mine Waste Gas) Methodology Determination 2015* (the Determination).

This is a minor variation to refine the definition of *existing regulatory obligation* in the Determination. The definition is used to determine when emission reduction activities are effectively required by law, including where alternative activities are restricted. This ensures projects that are already required by law are not credited under the Emissions Reduction Fund. The definition of *existing regulatory obligation* is intended to take relevant State and Territory laws into account. Since the original Determination was made, amendments have been made to the *Minerals and Resources Act 1989* (Qld). While the amendments do not change the intent of the *Minerals and Resources Act 1989* (Qld), they introduce additional flexibility to the permitted uses of coal mine waste gas. As a result of the amendments to the *Minerals and Resources Act 1989* (Qld), there is potential ambiguity about how the definition of *existing regulatory obligation* applies to projects. The Variation takes into account the updated Queensland law and ensures the term retains its original meaning and meets the original policy intent of the Determination.

The policy intent of the Determination is to credit projects that collect methane which would otherwise be vented to the atmosphere and convert it to carbon dioxide through the action of *flaring or flameless oxidation*, or *electricity generation* projects. In cases where a regulatory obligation to flare or beneficially use the methane applies, proponents have the option to have some abatement recognised and credited through *electricity displacement* or *ventilation air methane* projects.

Legislative provisions

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

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

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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 for 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 estimating abatement (emissions reduction and sequestration) from eligible projects and rules for monitoring, record keeping and reporting. These methodologies ensure that emissions reductions are genuine—that they are both real and additional to business-as-usual, outside of existing regulatory obligations imposed by state and territory legislation.

The Determination was made on 13 February 2015, and sets out the detailed rules for implementing and monitoring projects that avoid emissions through the destruction of the methane component of coal mine waste gas. Since the Determination was made, there have been subsequent amendments to state law which has introduced ambiguity and may result in the Determination not operating as originally intended. The Determination was varied on 7 November 2016 to allow crediting of electricity and ventilation air methane projects, but these amendments did not reconsider the appropriateness of the definition of *existing regulatory obligation*.

Further information on the Emissions Reduction Fund is available on the Department of the Environment and Energy website at: www.environment.gov.au/emissions-reduction-fund.

Operation

The Variation amends section 6 of the Determination. The Variation removes ambiguity around the types of projects intended to be excluded from the Determination.

The Variation does not affect projects that are already declared eligible under the existing Determination and whose crediting period has started. 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 began, under section 126 of the Act. These project proponents 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, and those approved projects whose crediting period has not begun when the Variation commences, will need to comply with the Determination as varied by the Variation, even if the applications were submitted before the Variation commenced. Under paragraph 69(4)(b) of the Act, existing project proponents have one opportunity to change the start date of a delayed crediting period chosen for the project, which may impact which version of the Determination applies.

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Consultation

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

The amendments under the Variation are minor and are designed to retain the original policy intent through removing any ambiguity from a defined term in the Determination. As such, subsection 114(9) of the Act allows these minor amendments to be made without advice from the Emissions Reduction Assurance Committee and without public consultation under section 123D of the Act. While not a legislative requirement, the Department undertook targeted consultation during the second half of 2018. This included sharing the draft text of the Variation and a draft of this explanatory statement for comment with affected project developers, industry associations and the Queensland Government. The Department also consulted with the Emissions Reduction Assurance Committee and the Clean Energy Regulator. Feedback was taken into account in making the Variation.

Determination details

A description of provisions in the Determination affected by the Variation is provided in Schedule 1. Numbered sections in this explanatory statement align with the items of the Variation. The definition of terms in ***bold italics*** can be found in the Variation or the Determination.

A complete description of the Variation is provided in Schedule 2. This is based on the original explanatory statement to the Determination and is intended to assist the interpretation of the Determination as amended by the Variation.

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

For the purpose of subsection 114(2) of the Act, in varying a methodology determination the Minister must have regard to whether the varied methodology determination complies with the offsets integrity standards. These require a methodology determination to result in carbon abatement that is unlikely to occur in the ordinary course of events. The clarified definition helps ensure this is the case. 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 carrying out the kind of project to which the varied methodology determination applies and other relevant considerations.

Regulatory impacts analysis

In 2014, as part of the Emissions Reduction Fund White Paper process, a regulatory assessment was certified in accordance with the 2014 Government Guide to Regulation. This process assessed the regulatory impacts associated with the Emissions Reduction Fund. This included assessing the impacts associated with future methods to be developed under the *Carbon Credits (Carbon Farming Initiative) Act 2011*, such as the potential future education costs, application costs, contract negotiation costs, and monitoring, verification and

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compliance audit costs. The regulatory impacts of the Emissions Reduction Fund were assessed as low. There have been no changes since the original assessment that would change the outcomes and as a result no further assessment of regulatory impacts is warranted.

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Schedule 1

Amendments of the *Carbon Credits (Carbon Farming Initiative—Coal Mine Waste Gas) Methodology Determination 2015*

Schedule 1 provides explanations to the amendments made by *Carbon Credits (Carbon Farming Initiative—Coal Mine Waste Gas) Methodology Determination Variation 2019* (the Variation).

One section of the *Carbon Credits (Carbon Farming Initiative—Coal Mine Waste Gas) Methodology Determination 2015* (the Determination) is varied by the Variation:

- Item [1] of Schedule 1 repeals and replaces section 6 of the Determination.

An explanation of the item in the Variation is below. A full explanation of the operation of the Determination as amended by the Variation is contained in Schedule 2. Both Schedule 1 and 2 are intended to assist in the interpretation of the Determination as amended by the Variation.

[1] Section 6 (definition of ***existing regulatory obligation***)

Section 6 sets out a definition of *existing regulatory obligation* for the purpose of informing section 17 which sets out the requirements in lieu of the regulatory additional requirement under subparagraph 27(4A)(b)(i) of the Act. Item [1] amends the definition of *existing regulatory obligation* for the purposes of ensuring the definition retains its original meaning and meets its original policy intention.

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Schedule 2

Details of the varied methodology determination

Schedule 2 provides an explanation of the amendments to the *Carbon Credits (Carbon Farming Initiative—Coal Mine Waste Gas) Methodology Determination 2015* (the Determination) by the *Carbon Credits (Carbon Farming Initiative—Coal Mine Waste Gas) Methodology Determination Variation 2019* (the Variation). It is intended to assist in the interpretation and implementation of the Determination.

1 Name

Section 1 sets out the full name of the Variation, which is the *Carbon Credits (Carbon Farming Initiative—Coal Mine Waste Gas) Methodology Determination Variation 2019*.

2 Commencement

Section 2 provides that the Variation commences on the day after it is registered on the Federal Register of Legislation.

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 that the *Carbon Credits (Carbon Farming Initiative—Coal Mine Waste Gas) Methodology Determination 2015* is amended as set out in Schedule 1 of the Variation.

Schedule 1 Amendment

Part 1 Preliminary

6 Meaning of *existing regulatory obligation*

Section 6 sets out the meaning of ***existing regulatory obligation*.** This concept is introduced in the Determination to clarify how regulatory additionality relates to the requirements under State and Territory legislation designed to promote beneficial use of coal mine waste gas where commercially feasible. The intent of this section in the Determination is to ensure abatement is awarded to projects that are additional to business as usual, outside of existing regulatory obligations imposed by State and Territory legislation. The policy intent of the Determination is to credit projects that collect methane, which would have otherwise been vented to the atmosphere and either:

- convert the methane to carbon dioxide (e.g. through combustion); or
- generate electricity and displace higher emissions-intensity grid electricity.

In cases where there is an existing regulatory obligation to flare or beneficially use the methane, proponents are only able to claim abatement through *electricity displacement* or through destruction of *ventilation air methane*. The Emissions Reduction Fund framework

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focuses on the practical operation of legal requirements under State and Territory law, but not on how a State or Territory government may enforce compliance with such requirements.

At the time the Determination was made (February 2015), it was considered that flaring or other beneficial use was effectively required in Queensland through the *Minerals and Resources Act 1989 (Qld)*. The Queensland legislation is drafted in a way to encourage the commercial use of methane. Flaring is authorised where use is not 'commercially or technically feasible'. Venting is only authorised where flaring is not 'technically practicable', unsafe or in relation to ventilation air methane (see subsections 318CO(3) of the *Mineral Resources Act 1989* (Qld)).

Example: Existing Regulatory Obligation under the Determination

Project proponents with an existing regulatory obligation to destroy coal mine waste gas are not excluded from the scope of the method. In Queensland, project proponents are eligible to be credited for abatement using the displacement electricity production and ventilation air methane project types only. They are not eligible to claim abatement under the project types new/expansion flaring or flameless oxidation, or new/expansion electricity production projects.

In September 2016 amendments to the *Minerals and Resources Act 1989 (Qld)* commenced which extended the options for coal mine lease holders to transfer methane to another person, rather than flare or use it themselves. The amendments to the *Minerals and Resources Act 1989 (Qld)* have not changed the intent of that Act with regard to section 318CO, which includes a restriction on venting of coal mine waste gas. The intent is supported by the explanatory notes to the Petroleum and Gas (Production and Safety) Bill 2004, which introduced section 318CO:

> *Clause 318CO imposes a condition on the mining lease that the incidental coal seam gas can only be flared if it is not technically or commercially feasible to use it. Venting is only permitted if for safety reasons it cannot be vented or flared, or there is a technical reason why the gas cannot be flared (that is, where there is insufficient flow from a well to allow ignition or where methane concentrations are low and it is not safe to do so).*

While the amendments to the *Minerals and Resources Act 1989 (Qld)* do not change the intent of that Act, it has been argued that a person who receives the transferred methane would then not be under a direct legal obligation to flare or beneficially use that methane.

To remove ambiguity with how the definition for *existing regulatory obligation* applies to project proponents, the Variation amends the Determination to meet the Determination's original policy intent. In particular, the relevant requirements under State or Territory law need not mandate 'flaring' or 'electricity generation'. They could involve any combination of requirements for methane to be destroyed, converted, beneficially used, stored, transferred to another person or offered for sale. The requirements also include where a law of a State or Territory, such as section 318CO of the *Mineral Resources Act 1989* (Qld), restricts the

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release of gas from the mine where flaring and /or alternative uses of, or other dealings with, the gas are practical, feasible or safe. This definition is intended to be interpreted broadly to stop the registration of projects, such as methane destruction from flaring and electricity generation, that are the most common way for coal mines to comply with their requirements under State and Territory law, regulations and licensing. Accordingly, any set of requirements within paragraphs 6(1)(a), (b) or (c) of the definition will be taken under the Determination to involve an obligation on the 'coal mine lease holder' to 'destroy the methane component of coal mine waste gas drawn from an operating underground coal mine' where that phrase is used by the Determination in subsection 17(1).

A new subsection 6(2) is included to make clear that a relaxation of regulatory requirements to allow participation in the Emissions Reduction Fund would not be taken into account when applying this test. Accordingly, for example, subsections 318CO(4) and (7) of the *Mineral Resources Act 1989* (Qld) are to be disregarded in applying the definition. This is consistent with the intent of paragraph 3.36(1)(a) of the *Carbon Credits (Carbon Farming Initiative) Regulations 2011* which excludes the eligibility of projects which results from relaxing or repealing State and Territory requirements after 24 March 2011.

This revised definition is consistent with the broader intent of the Emissions Reduction Fund to ensure projects are additional to business as usual operations.

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Attachment A

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—Coal Mine Waste Gas) Methodology Determination Variation 2019

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—Coal Mine Waste Gas) Methodology Determination Variation 2019* (the Variation) amends the *Carbon Credits (Carbon Farming Initiative—Coal Mine Waste Gas) Methodology Determination 2015* (the Determination). The Variation amends the Determination to ensure the definition of *existing regulatory obligation* reflects its original intent.

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.

Melissa Price, Minister for the Environment

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