EXPLANATORY STATEMENT

Select Legislative Instrument 2012 No. 76

Issued by the Authority of the Minister for Climate Change and Energy Efficiency

Australian National Registry of Emissions Units Act 2011

Australian National Registry of Emissions Units Amendment Regulation 2012 (No. 1)

The *Australian National Registry of Emissions Units Act 2011* (the ANREU Act) provides the legislative basis for the Australian National Registry of Emissions Units (the Registry). The Registry tracks the location and ownership of carbon units, issued under the *Clean Energy Act 2011* (the CE Act), Australian carbon credit units, issued under the *Carbon Credits (Carbon Farming Initiative) Act 2011* (the CFI Act), and certain international emissions units, including certain units issued in accordance with the Kyoto Protocol to the United Nations Framework Convention on Climate Change and associated rules (Kyoto units). The Registry is administered by the Clean Energy Regulator (the Regulator).

The *Australian National Registry of Emissions Units Regulations 2011* (the ANREU Regulations) deals with the opening and closing of Registry accounts and the treatment of Kyoto units. Schedule 1 to the *Australian National Registry of Emissions Units Amendment Regulation 2012 (No. 1)* (the Regulation) amends the ANREU Regulations to:

- replace the list of persons who can certify a document as a true copy of the original document;
- empower the Regulator to request further documents in relation to an application to open a Registry account;
- enable the Regulator to open a Registry account for a liable entity under the CE Act or a recipient of free carbon units even if the entity or recipient does not meet the fit and proper person criteria;
- apply the fit and proper person criteria to the authorised representative of an account holder;
- specify the conditions that must be met before assigned amount units or removal units can be converted to emission reduction units, and the steps that the Regulator must take to effect that conversion; and
- make certain other technical amendments.

Schedule 2 to the Regulation amends the ANREU Regulations so that the provisions dealing with the opening and closing of Registry accounts accommodate carbon units.

The legislative provisions which enable the Regulation are set out in Attachment A.

Details of the Amendment Regulation are set out in Attachment B.

A statement of compatibility with human rights is set out in Attachment C.

Consultation

The amendments are consequential on the commencement of the CE Act, give effect to Australia's obligations under the Kyoto Protocol and associated rules, effect minor machinery changes to the operation of the Registry and correct minor technical errors in the ANREU Regulations. Consultation on the amendments was therefore not required.

Authority: Section 97 of the *Australian National Registry of Emissions Units Act 2011*

Glossary

The following terms and abbreviations are used throughout this explanatory statement

Abbreviation	*Definition*
AAU	Assigned amount unit
ANREU Act	*Australian National Registry of Emissions Units Act 2011*
ANREU Regulations	*Australian National Registry of Emissions Units Regulations 2011*
CDM	Clean Development Mechanism
CE Act	*Clean Energy Act 2011*
CE Regulations	*Clean Energy Regulations 2011*
CFI Act	*Carbon Credits (Carbon Farming Initiative) Act 2011*
CFI Regulations	*Carbon Credits (Carbon Farming Initiative) Regulations 2011*
ERU	Emission reduction unit
ITL	International transaction log
JI	Joint Implementation
Registry	Australian National Registry of Emissions Units
Regulator	Clean Energy Regulator
RMU	Removal unit
UNFCCC	United Nations Framework Convention on Climate Change

ATTACHMENT A

Legislative authority for the *Australian National Registry of Emissions Units Amendment Regulation 2012 (No. 1)*

The Regulation is supported by section 97 of the ANREU Act, together with:

- subsection 5(2), which enables regulations that make provision for or in relation to the security and authenticity of notices transmitted to the Regulator by means of an electronic communication;
- subsection 10(1), which enables regulations that make provision for and in relation to empowering the Regulator to open accounts within the Registry;
- subsection 11(1), which enables regulations which prescribe identification procedures that must be carried out by the Regulator before the Regulator opens an account;
- section 12, which enables regulations which empower the Regulator to designate a Commonwealth Registry account as an account with a name specified in the regulations;
- subsection 15(1), which enables regulations that make provision for and in relation to empowering the Regulator to close a Registry account in response to a request;
- subsection 16(1), which enables regulations that make provision for and in relation to empowering the Regulator to unilaterally close a Registry account;
- subsection 27(1), which enables regulations that make further provision in relation to the Registry;
- paragraph 38(1)(e), which enables regulations which specify conditions that must be met before an assigned amount unit or a removal unit is converted to an emission reduction unit;
- subsection 38(2), which enables regulations which specify the steps the Regulator must take in relation to an instruction given in accordance with subsection 38(1);
- paragraph 45(2)(d), which enables regulations which prescribe the purposes for which a Kyoto unit is personal property;
- subsection 47(3), which enables regulations which specify the way in which a declaration of transmission given in accordance with subsection 47(2) is made.

ATTACHMENT B

Details of the *Australian National Registry of Emissions Units Amendment Regulation 2012 (No. 1)*

1 – Name of regulation

Section 1 provides that the name of the Regulation is the *Australian National Registry of Emissions Units Amendment Regulation 2012 (No. 1).*

2 – Commencement

Section 2 provides that Schedule 1 to the Regulation commences on the day after it is registered, and that Schedule 2 commences on 1 July 2012.

3 – Amendment of *Australian National Registry of Emissions Units Regulations 2011*

Section 3 provides that Schedules 1 and 2 to the Regulation amend the ANREU Regulations.

SCHEDULE 1 – Amendments commencing on day after registration

Item [1] – Regulation 3, definition of *certified copy*, paragraph (a)

Item [1] replaces paragraph (a) of the definition of 'certified copy'. This paragraph lists the categories of persons who can, for the purposes of the ANREU Regulations, certify a copy of a document as a true copy. This list generally accords with the list of certifiers accepted by the Australian Taxation Office, and includes bank, building society or credit union officers with 5 or more continuous years service, commissioners of declarations, judges, justices of the peace, sheriffs, legal practitioners (i.e. barristers or solicitors), medical practitioners (i.e. doctors), police officers and ministers of religion recognised under the *Marriage Act 1961*. Paragraph (a) applies when the copies that are required to be certified are located within Australia; the persons who can certify that such copies are true must also be located within Australia. Paragraph (b) applies when the copies are located overseas.

Item [2] – Regulation 3, definition of *certified copy*, paragraph (b)(ii) and note

Item [2] makes a technical amendment to paragraph (b)(ii) of the definition of 'certified copy' to correct the reference to the Convention Abolishing the Requirement of Legalisation for Foreign Public Documents and to insert a note explaining where the text of that Convention is located. The amendment is made by replacing the existing paragraph and note.

Item [3] – Regulation 3

Item [3] inserts a definition of 'Clean Energy Act' in regulation 3.

Item [4] – Regulation 3

Item [4] inserts a definition of 'fit and proper person criteria' in regulation 3. The definition is used in regulation 13, and refers to one of the matters the Regulator must consider before

opening a Registry account for a person. The term is defined by reference to the criteria for recognition set out in section 64 of the CFI Act and the regulations made under that section. This is a reference to paragraphs (a), (b), (c) and (d) of subsection 64(3) of the CFI Act and regulation 4.11 of the CFI Regulations. While the fit and proper person criteria are defined by reference to the CFI Act and Regulations, the criteria do not only apply to persons opening accounts in relation to eligible offsets projects under the CFI Act. Rather, regulation 13 provides that the Regulator must consider whether any person applying to open a Registry account meets the fit and proper person criteria.

Item [5] – Regulation 3

Item [5] inserts a definition of 'ICN' in regulation 3. ICN, or Indigenous Corporation Number, is defined by reference to section 700-1 of the *Corporations (Aboriginal and Torres Strait Islander) Act 2006*.

Item [6] – Regulation 3, note

Item [6] replaces the note to regulation 3. The note lists words and expressions used in the ANREU Regulations which are defined in the ANREU Act. The replaced note includes a reference to 'carbon unit'. 'Carbon unit' is defined in the ANREU Act by reference to the CE Act.

Item [7] – Subregulation 9(4), table, item 3

Item [7] inserts a reference to ICN in item 3 of the table in subregulation 9(4). This amendment will be of most relevance to registered native title bodies corporate applying to open a special native title account for an eligible offsets project under the CFI Act (see section 48 of the CFI Act). The amendment is made by replacing item 3 of the table.

Items [8]–[10] – Regulation 11, heading, subregulation 11(1), and after subregulation 11(2)

Item [8] amends the heading to regulation 11, so that it refers to 'Further information and documents'.

Item [9] empowers the Regulator to request further documents in relation to a request to open an account.

Item [10] inserts new subregulation (3), the effect of which is that the Regulator can request further documents in relation to a request to open an account despite the operation of regulation 17. For example, the Regulator could request a document that had previously been provided by the applicant in accordance with the registration requirements under the *National Greenhouse and Energy Reporting Act 1997,* should the Regulator consider it prudent to check the authenticity of the document.

Item [11] – Subregulation 13(2)

Item [11] replaces subregulation 13(2).

A person must have a Registry account in order to be issued or hold carbon units under the CE Act, Australian carbon credit units under the CFI Act, and certain international emissions units. Applications to open a Registry account must be made to the Regulator in accordance with Part 2 of the ANREU Regulations.

The effect of new subregulation 13(2) is that the Regulator may only open a Registry account if the Regulator:

- has reviewed the proof of identity evidence supplied by the applicant and is satisfied of the applicant's identity;
- has assessed whether the applicant is fit and proper having regard to the criteria for recognition set out in section 64 of the CFI Act and the regulations made under that section (the fit and proper person criteria); and
- if the applicant is not an individual—is satisfied that the request to open the account is appropriately authorised by the applicant.

Unless the applicant is a liable entity within the meaning of the CE Act, or is eligible to be issued free carbon units under Part 8 of that Act or under the Jobs and Competitiveness Program established by Schedule 1 to the CE Regulations, the Regulator must not open an account for the applicant unless satisfied that the applicant meets the fit and proper person criteria. This helps ensure the integrity of the Registry and protect it from abuse.

If the applicant is a liable entity or is eligible to be issued free carbon units, the Regulator may open a Registry account for the applicant even if the Regulator is not satisfied that the applicant meets the fit and proper person criteria. This is to ensure that a liable entity is not precluded from meeting its liabilities under the CE Act, and a person who would otherwise be eligible to be issued free carbon units is not precluded from being issued those units, merely because the person is ineligible to open a Registry account by reason of their fit and proper person status, including, for example, because they are an insolvent under administration or an externally-administered body corporate.

Proposed amendments to the ANREU Act will restrict or limit the operation of accounts opened in circumstances where the Regulator is not satisfied that the fit and proper person criteria have been met. Alternatively, the Regulator may impose conditions restricting or limiting the operation of the account by exercising the powers conferred on the Regulator under section 28C of the ANREU Act. For example, the Regulator may limit the number of carbon units that can be held in a liable entity's account to the number that the liable entity is liable to surrender under the CE Act.

Item [12] – Paragraph 14(2)(b)

Item [12] replaces paragraph 14(2)(b), so that a person who is required to provide documentary proof of a matter must either provide a certified copy of the original document or, if the Regulator requests it, the original document.

Item [13] – Subregulation 16(3), definition of *authorised translation service*

Item [13] makes a technical amendment to the definition of 'authorised translation service' to correct the name of the National Accreditation Authority for Translators and Interpreters Limited.

Items [14]-[15] – Paragraph 17(1)(a) and subparagraph 17(1)(a)(i)

Items [14] and [15] amend subregulation 17(1) so that an entity making a request to open an account is not required to provide a document identifying the entity if the entity has previously submitted the document, or a certified copy of the document, in accordance with the registration requirements under the *National Greenhouse and Energy Reporting Act 2007* or the *Renewable Energy (Electricity) Act 2000*. The certified copy of the document would need to have been certified by a person listed in the definition of 'certified copy' in regulation 3 for this exception to apply.

Item [16] – Subregulation 31(2)

Item [16] replaces subregulation 31(2) and inserts new subregulation 31(2A), so that the Regulator may give an account holder's authorised representative access to the account holder's account only if the Regulator is satisfied of the authorised representative's identity and that the authorised representative is fit and proper having regard to the criteria for recognition set out in section 64 of the CFI and the regulations made under that section.

If the account is a Commonwealth registry account, and the authorised representative is an SES employee, the authorised representative is deemed to have met the fit and proper person criteria. This is because SES employees have already been subject to high level government security clearance processes and it is counter-productive to require the Regulator to replicate these processes. 'SES employee' has the same meaning it has in the *Public Service Act 1999*.

Item [17] – Subregulation 32(3)

Item [17] deletes the reference to 'the Administrator' in subregulation 32(3) and replaces it with a reference to 'the Regulator'. This reflects the transfer of functions in relation to the Registry from the Carbon Credits Administrator to the Regulator.

Item [18] – Subregulation 33(1)

Item [18] replaces subregulation 33(1) and inserts new subregulation 33(1A). The effect of the amendment is that the registered holder must notify the Regulator of any change in the holder's name, business name or trading name. A notice of any such change must be accompanied by a document that evidences the change.

The registered holder must also notify the Regulator of any change in the name or contact details for the holder's authorised representative. A notice of any change in the authorised representative's name must be accompanied by a document that evidences the change. This covers situations where the name of the authorised representative has been legally changed,

for example, following marriage. A change to the identity of the authorised representative is dealt with in regulation 32.

Further, the registered holder must notify the Regulator of any change in relation to whether the holder or the holder's authorised representative continues to meet the fit and proper person criteria. For example, the registered holder must notify the Regulator if the holder becomes an externally-administered body corporate, or if any of the holder's executive officers are convicted of a dishonesty offence, or if the holder's authorised representative becomes an insolvent under administration or is convicted of a dishonesty offence.

Item [19] – After regulation 37

Item [19] inserts regulation 38, dealing with the conversion of assigned amount units (AAUs) or removal units (RMUs) to emission reduction units (ERUs). AAUs, RMUs and ERUs are all types of Kyoto units for the purposes of the ANREU Act.

ERUs are the tradeable units of Joint Implementation (JI), an international offsets mechanism established under the Kyoto Protocol to the United Nations Framework Convention on Climate Change (UNFCCC).

JI is a market-based mechanism designed to assist developed country parties (known as Annex I Parties) to the UNFCCC and the Kyoto Protocol to manage their emission reduction commitments set out in the Kyoto Protocol.

JI allows Annex I Parties (and entities approved by Annex I Parties) to invest in emission reduction or removal projects (JI projects) hosted in another Annex I Party and, in return, to receive ERUs corresponding to the volume of sequestered (that is, stored) or abated (that is, reduced) carbon dioxide-equivalent achieved by JI projects.

ERUs are issued by the Annex I Party that is hosting the JI project. Annex I Parties have different national policies about the type of JI projects that they will host and the procedure for issuing ERUs. In general, following verification of achieved emission reductions, a host country will direct its national emissions registry to convert to ERUs an equivalent number of AAUs or RMUs which are held in its national emissions registry.

Upon issuance of ERUs, the project participant(s) are free to transfer the ERUs out of the national emissions registry into which they were issued to an account in another national registry via the International Transaction Log (ITL).

In Australia, the conversion of AAUs and RMUs to ERUs is regulated by section 157 of the CFI Act and section 38 of the ANREU Act. An ERU may only be converted from an AAU or an RMU that was exchanged for a Kyoto Australian carbon credit unit, as defined in the CFI Act (paragraph 38(1)(b) of the ANREU Act). The instruction to convert the Kyoto Australian carbon credit unit to an AAU or RMU must be made by the person to whom the unit was issued and be received by the Regulator prior to 1 July 2013 (paragraph 157(1)(a) and (b) of the CFI Act). The instruction to convert the AAU or RMU to an ERU must also be made before this date.

The Regulator can only act on an instruction if the conditions specified in regulation 38 are met. These conditions are that:

- the relevant abatement relates to a JI project that has been approved by Australia's National Authority for the CDM (Clean Development Mechanism) and JI and has been conducted in accordance with the applicable JI requirements under the Kyoto rules;
- the person gives the Regulator the project's ITL project identifier; and
- if:
    - the abatement relates to a sequestration offsets project (within the meaning of the CFI Act); and
    - the person instructs the Regulator to convert an AAU to an ERU;

  there must be a sufficient number of RMUs that were issued for abatement which occurred during the first commitment period available in the Commonwealth holding account.

If these conditions are met, the Regulator must take the following steps upon receipt of an instruction referred to in paragraph 38(1)(c) of the ANREU Act:

Emissions avoidance offsets projects—conversion of AAU to ERU

- The Regulator must convert the AAU to an ERU in accordance with the Kyoto rules.

Sequestration offsets projects—conversion of AAU to ERU

- The Regulator must remove the entry for the AAU from the person's Registry account, convert an RMU in the Commonwealth's holding account to an ERU in accordance with the Kyoto rules, remove the entry for the ERU from the Commonwealth's account and create an entry for the ERU in the person's account.

Sequestration offsets projects—conversion of RMU to ERU

- The Regulator must convert the RMU to an ERU in accordance with the Kyoto rules.

Item [20] – Regulation 48

Item [20] replaces regulation 48. The effect of this amendment is that a Kyoto unit is personal property for the purposes of *Personal Property Securities Act 2009* and the *Proceeds of Crime Act 2002*.

Item [21] – Paragraph 49(2)(b)

Item [21] makes a technical amendment to paragraph 49(2)(b) to remove the words 'to be transmitted'. Regulation 49 deals with the situation where a Kyoto unit has been transmitted by will (i.e. upon the death of the registered holder of the unit) or by operation of law (for example, by operation of a court order). Subsection 47(1A) of the ANREU Act provides that such a transmission is of no effect until the Regulator transfers the unit under subsection

47(7) or (8). Subsection 47(2) provides that the person to whom the units are transmitted (the transferee) must give the Regulator a declaration of transmission. Subregulation 49(2) sets out the requirements for the declaration. Paragraph (b) of existing subregulation 49(2) requires the transferee to identify the serial numbers of the Kyoto units *to be transmitted*. However, as the units would already have been transmitted by operation of law (e.g. upon the making of the court order), the italicised words are unnecessary.

SCHEDULE 2 – Amendments commencing 1 July 2012

Items [1]-[2] – Paragraph 24(o) and after paragraph 24(o)

Items [1]-[2] enable the Regulator to designate Commonwealth Registry accounts with the names mentioned in item [2]. These accounts are needed for the proper administration of the CE Act.

Item [3] – After paragraph 27(1)(a)

Item [3] amends regulation 27 so that a Registry account cannot be voluntarily closed if there are any entries for any carbon units in the account.

Items [4]-[5] – Paragraph 28(3)(b) and before subregulation 28(4)

Item [4] amends regulation 28 so that, if the Regulator decides to unilaterally close a Registry account, the Regulator must notify the account holder that any carbon units in the account immediately before it is closed will be cancelled.

Item [5] amends regulation 28 so that any carbon units in an account immediately before it is unilaterally closed are cancelled.

Item [6] – Before paragraph 33(2)(a)

Item [6] amends regulation 33 so that a registered holder must notify the Regulator if the holder knows that a carbon unit has been incorrectly transferred to or from the holder's Registry account.

Item [7] – Before paragraph 34(4)(a)

Item [7] amends regulation 34 so that a registered holder must not initiate a Registry transaction in relation to a carbon unit that the holder knows, or ought reasonably to know, has been incorrectly transferred to the holder's account.

ATTACHMENT C

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Australian National Registry of Emissions Units Amendment Regulation 2012 (No. 1)

The Regulation 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 *Australian National Registry of Emissions Units Amendment Regulation 2012 (No. 1)*

The Regulation amends the *Australian National Registry of Emissions Units Regulations 2011* to:

- replace the list of persons who can certify a document as a true copy of the original document;
- empower the Clean Energy Regulator (Regulator) to request further documents in relation to an application to open an Australian National Registry of Emissions Units (Registry) account;
- enable the Regulator to open a Registry account for a liable entity or a recipient of free carbon units under the *Clean Energy Act 2011* even if the entity or recipient does not meet the fit and proper person criteria;
- apply the fit and proper person criteria to the authorised representative of an account holder;
- specify the conditions that must be met before assigned amount units or removal units can be converted to emission reduction units, and the steps that the Regulator must take to effect that conversion; and
- make certain other technical amendments.

Human rights implications

The Regulation empowers the Regulator to collect personal information about account holders and their authorised representatives and thus engages the right to privacy and reputation.

While collection of personal information limits the right to privacy, the Regulation is not considered to be incompatible with this right. This is because:

- the information collected is necessary for the identification of account holders and their authorised representatives and the assessment of whether they are fit and proper to hold and operate Registry accounts. The proper assessment of the identity and suitability of persons who hold or operate Registry accounts is part of a suite of measures designed to protect the Registry from fraud and other abuse;

- the Regulator and its officials are subject to the secrecy provisions in the *Clean Energy Regulator Act 2011*, and are prohibited from disclosing this information except in specified circumstances.

Conclusion

The Regulation is compatible with human rights because, to the extent that it may limit those rights, that limitation is reasonable, necessary and proportionate.

Greg Combet

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