

EXPLANATORY STATEMENT

Select Legislative Instrument 2011 No. 266

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 Regulations 2011

Section 97 of the *Australian National Registry of Emissions Units Act 2011* (the ANREU Act) provides, in part, that the Governor-General may make regulations prescribing matters required or permitted by the ANREU Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the ANREU Act.

The ANREU Act, together with the *Carbon Credits (Carbon Farming Initiative) Act 2011* (the CFI Act) and the *Carbon Credits (Consequential Amendments) Act 2011*, implements the Carbon Farming Initiative (CFI). The CFI is a voluntary scheme that aims to provide incentives for the agricultural and forestry sectors to minimise greenhouse gas emissions or maximise carbon storage by altering their agricultural and forestry practices.

The ANREU Act provides a legislative basis for the Australian National Registry of Emissions Units (the Registry). The Registry will track the location and ownership of Australian carbon credit units (ACCUs) —issued under the CFI Act — as well as meet Australia's ongoing obligations under the Kyoto Protocol. Upon commencement of the clean energy package of legislation, the Registry will also act as the Registry for carbon units issued under the carbon pricing mechanism.

The *Australian National Registry of Emissions Units Regulations 2011* (the Regulations) provide necessary details supporting the administration of the ANREU Act. In particular, the Regulations deal with:

- the opening, closing and the particulars of Registry accounts, including identification procedures;
- international and domestic transfers of Kyoto units;
- the cancellation of Kyoto units; and
- the application and implementation of the Kyoto rules.

The sections of the ANREU Act which enable the Regulations are set out in Attachment A.

General policy guidance on the purpose of the Regulations is provided at Attachment B.

Details of the Regulations are set out in Attachment C.

Consultation

The ANREU Act and Regulations reflect the outcomes of comprehensive consultation with stakeholders on the design of the CFI and its interaction with the Registry between October 2010 and February 2011.

The Regulations build on the draft *Carbon Pollution Reduction Scheme Regulations 2009*, which were exposed for consultation in October 2009. They also build on the terms and conditions governing the current operation of the Registry. These terms and conditions are published on the Department of Climate Change and Energy's website.

An exposure draft of the Regulations was released on 31 October 2011. Eight submissions were received and considered in the drafting of these Regulations. The Department also discussed the Regulations with interested stakeholders.

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

Glossary

The following abbreviations and acronyms are used throughout this explanatory statement.

<i>Abbreviation</i>	<i>Definition</i>
ABN	Australian business number, a unique number issued by the Australian Business Register
ACCU	Australian carbon credit unit
ACN	Australian company number, a unique number issued by ASIC
Administrator	The Carbon Credits Administrator
ANREU Act	<i>The Australian National Registry of Emissions Units Act 2011</i>
ARBN	Australian registered body number, a unique number issued by the ASIC
ASIC	Australian Securities and Investments Commission
Assigned amount	The volume of greenhouse gases that may be emitted during a commitment period by a country with a commitment under the Kyoto Protocol
AAU	Assigned amount unit: a type of Kyoto unit issued by a country with a commitment under the Kyoto Protocol up to the value of its assigned amount under the Kyoto Protocol
Authorised representative	An individual who is nominated under the Regulations to be an authorised representative for a particular registry account and act on behalf of the account holder for certain actions
CER	Certified emission reduction: a type of Kyoto unit issued to a project under the CDM
CDM	Clean Development Mechanism, a market based mechanism under the Kyoto Protocol involving projects in developing countries
CFI	Carbon Farming Initiative
CFI Act	<i>The Carbon Credits (Carbon Farming Initiative) Act 2011</i>
CFI Regulations	<i>The Carbon Credits (Carbon Farming Initiative) Regulations 2011</i>
x/CMP.y	Decision number x agreed by the Meeting of the Kyoto Parties at its yth session
Department	The Department administering the Act, at time of passage the Department of Climate Change and Energy Efficiency

ERU	Emission reduction unit: a type of Kyoto unit created by converting an assigned amount unit or a removal unit as a result of a JI project
Executive officer	In reference to a body corporate, means a director, the chief executive officer (however described), the chief financial officer (however described) or the secretary of the body corporate
ITL	International Transaction Log, operated by the United Nations Framework Convention on Climate Change Secretariat to verify the validity of transactions of Kyoto units
JI	Joint Implementation, a market based mechanism under the Kyoto Protocol involving projects in developed countries
Kyoto ACCU	A type of ACCU, defined in section 5 of the CFI Act
Kyoto Protocol	The Kyoto Protocol to the United Nations Framework Convention on Climate Change, under which some developed countries have inscribed emissions target levels
Kyoto rules	This term is defined in section 4 of the ANREU Act. In brief, it includes the Kyoto Protocol, decisions of the Meeting of the Kyoto Parties, certain standards adopted by such a Meeting and prescribed instruments
Kyoto unit	An assigned amount unit, a certified emission reduction, an emission reduction unit, a removal unit or a prescribed unit issued in accordance with the Kyoto rules
Long-term certified emission reduction	A type of non-permanent Kyoto unit issued to forestry projects under the CDM
Minister	The Minister administering the Act
Person	Any of the following: an individual, a body corporate, a trust (meaning a person in the capacity of trustee), a corporation sole, a body politic, a local governing body
Project proponent	Under the CFI, the person who is responsible for carrying out a project and has the legal right to carry out the project. If the project is a sequestration offsets project, the proponent must also hold the applicable sequestration right in relation to the project area or areas
Proof of identity documentation	Documentation required by the Administrator to prove the identity of a person
Proof of identity information	Information required by the Administrator to prove the identity of a person

Registered holder	In relation to an ACCU or Kyoto unit, means the person in whose Registry account there is an entry for the unit
Registry	Australian National Registry of Emissions Units
Regulations	<i>The Australian National Registry of Emissions Units Regulations 2011</i>
RMU	Removal unit: a type of Kyoto unit issued by a country with a commitment under the Kyoto Protocol for sequestration caused by certain human-induced land-use change and forestry activities
Temporary certified emission reduction	A type of non-permanent Kyoto unit issued to forestry projects under the CDM

Sections of the ANREU Act supporting the Regulations

The Regulations are supported by the following provisions of the ANREU Act:

- section 4, which allows the regulations to define the term ‘commitment period reserve’;
- subsection 5(2), which allows the regulations to make provision for or in relation to the security and authenticity of notices transmitted to the Administrator by means of an electronic communication;
- subsection 10(1), which allows the regulations to make provision for and in relation to empowering the Administrator to open accounts within the Registry;
- subsection 11(1), which allows the regulations to prescribe identification procedures that must be carried out by the Administrator before the Administrator opens a Registry account in the name of the person;
- subsection 12, which allows the regulations to empower the Administrator to designate a Commonwealth Registry account as an account with a name specified in the regulations;
- section 13, which allows the regulations to empower the Minister to direct the Administrator to open a Registry account in the name of the Commonwealth, and give that Registry account the designation specified in the direction;
- subsection 14(1), which allows the regulations to provide that, if there is an entry for a Kyoto unit in a specified Commonwealth Registry account, the unit cannot be transferred;
- subsection 15(1), which allows the regulations to make provision for and in relation to empowering the Administrator to close a Registry account kept in the name of a person, on request;
- subsection 16(1), which allows the regulations to make provision for and in relation to empowering the Administrator to close a Registry account kept in the name of a person, unilaterally;
- subsections 16(3), (4) and (5), which allow the regulations to provide for the cancellation or transfer of units following the closure of a Registry account;
- subsection 16(6), which allows the regulations to provide that the Administrator must refuse a request to open another Registry account for a person where the Administrator has closed the person’s Registry account under regulations made for subsection 16(1);
- section 18, which allows the regulations to empower the Administrator to change the Registry to reflect a change in an account holder’s name;
- subsection 27(1), which allows the regulations to make further provision in relation to the

Registry;

- paragraph 34(2)(c), which allows the regulations to specify information that must accompany an instruction to transfer Kyoto units between accounts within the Registry;
- paragraph 35(2)(b), which allows the regulations to specify information that must accompany an instruction to make an outgoing international transfer of Kyoto units;
- subsection 39(1), which allows the regulations to make provision for or in relation to giving effect to the Kyoto rules, so far as those rules relate to specified matters;
- subsection 41(1), which allows the regulations to make provision for or in relation to the management of Australia's commitment period reserve;
- subsection 42(2), which allows the regulations to prescribe the procedure for the cancellation of temporary certified emission reductions or long-term certified emission reductions;
- subsection 43(1), which allows the regulations to prescribe the circumstances in which a person is required to replace a long-term certified emission reduction and the time by which it must be replaced;
- subsection 43(2), which allows the regulations to prescribe the procedure for the transfer of a long-term certified emission reduction to a mandatory cancellation account;
- subsection 43(3), which allows the regulations to identify an appropriate account for the purposes of the replacement of a long-term certified emission reduction;
- section 44, which allows the regulations to prevent, restrict or limit the transfer of Kyoto units from a Registry account or a foreign account to a Commonwealth Registry account;
- paragraph 45(2)(d), which allows the regulations to prescribe further purposes for which a Kyoto unit is personal property;
- paragraph 47(2)(b), which allows the regulations to specify the evidence of transmission that must accompany a declaration of transmission;
- subsection 47(3), which allows the regulations to prescribe the manner in which a declaration of transmission must be made;
- subsection 60(1), which allows the regulations to make provision for or in relation to requiring the Administrator to publish on the Administrator's website information that a provision of the Kyoto rules requires Australia's national registry to make publicly available;
- subsection 95(1), which allows the regulations to make provision in relation to a matter by applying, adopting or incorporating, with or without modification, a matter contained in an instrument or writing as in force or existing at a particular time or from time to time;

- section 96, which allows the regulations to make provision in relation to a matter by conferring a power to make a decision of an administrative character on the Administrator; and
- section 97, which allows the Governor-General to make regulations prescribing matters required or permitted by the ANREU Act to be prescribed and matters necessary or convenient to be prescribed for carrying out or giving effect to the ANREU Act.

General Policy Guidance on the Regulations

The Registry

The Registry was established under the Commonwealth's executive power to meet one of Australia's commitments under the Kyoto Protocol. It is an electronic system that ensures accurate accounting of the issuance, holding, transfer, acquisition, cancellation, retirement and carry-over of Kyoto units.

The ANREU Act provides a legislative basis for the Registry, gives effect to Australia's ongoing obligations under the Kyoto Protocol, and enables the Registry to track the location and ownership of ACCUs. The Registry is maintained by the Carbon Credits Administrator (the Administrator).

Amendments to the ANREU Act included in the clean energy package of legislation will enable the Registry to act as the Registry for carbon units issued under the carbon pricing mechanism. The amendments insert further safeguards against fraud and crime to ensure the integrity of the Registry and the programs it supports, and provide for the administration of the Registry to transfer to the Clean Energy Regulator. The Regulations will be amended in due course to give effect to these changes.

Identification procedures

To ensure the integrity of the Registry, and protect it from fraudulent conduct, a customer identification procedure based on that set out in Chapter 4 of the *Anti-Money Laundering and Counter-Terrorism Financing Rules Instrument 2007 (No 1)* is established. Accounts will not be opened unless the Administrator is satisfied of the account holder's identity. Access to accounts will only be given to persons whose identity has been verified.

Kyoto rules

The Regulations give effect to some of Australia's obligations under the Kyoto rules, such as those relating to Australia's commitment period reserve, the designation of Commonwealth Registry accounts, and the holding, transfer, acquisition, cancellation, transmission and retirement of Kyoto units. The Kyoto rules may change, and it is intended that the Regulations will give effect to those rules as they exist from time to time.

Regulations dealing with the conversion of assigned amount units or removal units to emission reduction units (where units are issued in relation to a joint implementation project), and carry-over restrictions, will be developed at a later time. Regulations dealing with prescribed international units will be developed in the event trade in such units is permitted in Australia.

Details of the Regulations

PART 1—PRELIMINARY

Regulation 1 – Name of Regulations

1. This regulation provides that the name of the Regulations is the *Australian National Registry of Emissions Units Regulations 2011*.

Regulation 2 – Commencement

2. This regulation provides that the Regulations commence on the same day as section 3 of the CFI Act, i.e. 8 December 2011.

Regulation 3 – Definitions

3. This regulation defines a number of terms used in the Regulations. Other words and expressions are defined in the ANREU Act, and have the meaning given by that Act.

Regulation 4 – Meaning of *commitment period reserve*

4. This regulation provides that, for the purposes of the ANREU Act, the term ‘commitment period reserve’ means the minimum level of Kyoto units for a relevant commitment period that must be maintained in the Registry under the Kyoto rules in accordance with paragraphs 6 and 7 of the Annex to Decision 11/CMP.1 of the Meeting of the Kyoto Parties.

5. The minimum level of Kyoto units that must be maintained by Australia under these paragraphs is 90% of Australia’s assigned amount calculated under Article 3, paragraphs 7 and 8 of the Kyoto Protocol, or 100% of 5 times Australia’s most recently reviewed inventory, whichever is lowest.

6. The first commitment period under the Kyoto rules began on 1 January 2008 and ends on 31 December 2012.

Regulation 5 – Meaning of *ordinarily resident in Australia*

7. This regulation defines the meaning of ‘ordinarily resident in Australia’. This definition is used to identify whether a person is a ‘foreign person’ for the purposes of the Regulations.

Regulation 6 - Approved forms

8. This regulation empowers the Administrator to approve forms for the opening of Registry accounts, the notification of any change in the contact details for an account holder or authorised representative, and the removal or addition of an authorised representative for a particular account.

Regulation 7 - Electronic notices transmitted to Administrator

9. This regulation sets out the requirements that must be met before the Administrator will act on an electronic notice.
10. Instructions in relation to the domestic and outgoing international transfer of Kyoto units, the conversion of assigned amount units or removal units to emission reduction units, and the voluntary cancellation of Kyoto units, must be given to the Administrator by electronic notice.
11. An electronic notice which is not transmitted in accordance with the requirements set out in this regulation is not an ‘electronic notice transmitted to the Administrator’ for the purposes of the ANREU Act, and the Administrator will not give effect to it: paragraph 5(1)(c) of the ANREU Act.
12. This regulation provides that electronic notices must be transmitted to the Administrator using the Administrator’s website, and may only be transmitted by specified persons.
- If the account holder is an individual, notices may only be transmitted by the individual or their authorised representative.
 - If the account holder is not an individual (i.e. a body corporate, a corporation sole, a trust, a body politic or a local governing body) notices must be transmitted by the account holder’s authorised representative.
13. An account holder’s authorised representative must be an individual (see definition of ‘authorised representative’ in regulation 3). The Administrator must be satisfied of the authorised representative’s identity before the Administrator will act on an electronic notice (see regulation 31(2)). Proof of identity information and documentation for the authorised representative must therefore be given to the Administrator (see regulation 15(1)(c)).
14. Corresponding requirements in relation to electronic notices about ACCUs are set out in the CFI Regulations.

PART 2—AUSTRALIAN NATIONAL REGISTRY OF EMISSIONS UNITS

Division 2.1—Opening Registry accounts

Regulation 8 - General

15. This regulation identifies sections 10 and 11 of the ANREU Act as the source of power to make the regulations in this Division.

Regulation 9 - Requests to open Registry account

16. This regulation provides that a person can request the Administrator to open a Registry account in the name of the person. A ‘person’, for these purposes, means an individual, a body

corporate, a trust, a corporation sole, a body politic or a local governing body, and includes persons who are not ordinarily resident in Australia.

17. Requests must be made in the approved form and include the information specified in this regulation. This information deals with the identity and contact details of the applicant and, for an applicant which is not an individual, other information relevant to the creation, registration and operations of the applicant, such as the applicant's ABN, ACN, ARBN or other unique registration number (if any), and the jurisdictions in which the applicant operates.

18. If the applicant is not an individual, the request must include the name and contact details of at least one individual who will be the applicant's authorised representative for Registry purposes. The authorised representative will be able to view the applicant's account, initiate and approve Registry transactions, and add or remove authorised representatives.

19. If the applicant is an individual, the request may, but need not, include the name and contact details of an authorised representative.

Regulation 10 - Additional information – beneficial ownership

20. This regulation provides that a request to open a Registry account for a proprietary or private company must include the name and address of any beneficial owner of the company (i.e. any person who owns, through one or more share holdings, over 25% of the issued capital in the company). This requirement does not apply if the company is publicly listed in Australia, or is a majority owned subsidiary of such a company, or if the company is licensed and subject to the regulatory oversight of a Commonwealth statutory regulator in relation to its activities as a company (for example, because the company has an Australian financial services licence and is regulated by ASIC). In these circumstances, information about beneficial ownership would already have been provided to the relevant regulator as part of the licensing process.

21. This regulation also provides that a request to open a Registry account for a trust must include the names of the beneficiaries of the trust or, if the beneficiaries are identified by reference to membership of a class, details about the class. This requirement does not apply if the trust is registered and subject to the regulatory oversight of a Commonwealth statutory regulator (such as ASIC, the Australian Prudential Regulatory Authority or the Australian Taxation Office), or if the trust is a Commonwealth, State or Territory government superannuation fund established by legislation.

Regulation 11 - Further information

22. This regulation provides that the Administrator can request further information from applicants.

23. The requested information must be relevant to the request to open an account, and the Administrator must ensure that the power to request the information is exercised in a reasonable way: section 88 of the ANREU Act.

24. If the requested information is not provided within the specified period of time, the Administrator may refuse to open the account.

Regulation 12 - Verification of information

25. This regulation provides that the Administrator may ask a person to verify statements made in a request to open a Registry account by statutory declaration.

Regulation 13 - Opening of Registry accounts

26. This regulation empowers the Administrator to open a Registry account in response to a request.

27. The Administrator must not open an account unless satisfied of the applicant's identity, that the applicant is a fit and proper person having regard to the criteria set out in the CFI Act and any regulations made under that Act and, if the account holder is not an individual, that the request to open the account is appropriately authorised.

28. In determining whether the applicant is fit and proper, the Administrator must have regard to matters that include any convictions the applicant has under domestic or foreign law relating to dishonest conduct, whether the applicant has had any orders made against it by the Australian Competition and Consumer Commission, whether the applicant has breached the CFI Act or the *National Greenhouse and Energy Reporting Act 2007*, and whether the applicant is insolvent under administration or externally-administered.

29. The Administrator must not open an account if the Administrator has previously closed an account held by the person because the person has contravened Part 2 of the ANREU Act or Regulations (see regulation 28(7)).

30. Applicants will be notified of any decision not to open an account.

Division 2.2 – Identification procedures

Subdivision 2.2.1 – Document requirements

Regulation 14 – General

31. This regulation provides that any proof of identity documents required to be given to the Administrator must be current. Certified copies of original documents, rather than the original document itself, must be provided. A certified copy is one that has been certified as a true copy by a person mentioned in Schedule 2 to the *Statutory Declarations Regulations 1993*. If the application is made from overseas, the copy must be certified as a true copy by:

- an Australian embassy, Australian High Commission or Australian consulate (other than a consulate headed by an honorary consul); or

- by a competent authority under the Hague Convention Abolishing the Requirement for Legalisation for Foreign Public Documents done at The Hague on 5 October 1961.

32. Information about ‘competent authorities’ can be found at www.hcch.net.

Regulation 15 – Proof of identity and authorisation – at time of request

33. This regulation provides that a person applying to open an account must provide proof of identity documentation for both the person in whose name the account is to be opened and for that person’s authorised representative (if any). For bodies corporate with no ABN, proof of identity documentation is also required for up to 3 executive officers of the body. For trusts, proof of identity documentation is also required for the trustees.

34. If the person is not an individual, the Administrator will only open the account if satisfied that the request to open the account has been appropriately authorised by the person. Documentary evidence that the request is authorised, such as a copy of signed minutes of the decision to authorise the opening of the account, or other appropriate evidence, must be provided with the request.

Regulation 16 – English translation of documents

35. This regulation provides that where a person is required to provide a proof of identity document, and the document is not written in English, the person must provide an English translation of the document that has been prepared and certified as a true copy by an authorised translation service. ‘Authorised translation service’ means a translation service accredited by the National Accreditation Authority for Translators and Interpreters.

Regulation 17 – When documents need not be given under this Division

36. This regulation provides that an entity does not need to provide a proof of identity document if the entity is registered under the *Renewable Energy (Electricity) Act 2007* or the *National Greenhouse and Energy Reporting Act 2007* and has already submitted the document to the Department as part of that process.

37. Similarly, a person does not need to provide a proof of identity document if the document has been provided to the Administrator as part of an application to become a recognised offsets entity under the CFI Act.

Subdivision 2.2.2 – Proof of identity for individuals

Regulation 18 – Individuals

38. This regulation sets out the proof of identity documents that must be provided in relation to individuals. This documentation must be provided in relation to individuals seeking to open a Registry account and individuals who have been nominated to be an authorised representative for an account. Where an account holder is a body corporate with no ABN, this documentation must be provided for up to 3 executive officers of the body. Where the account holder is a trust, this documentation must be provided for any trustee who is an individual.

39. Three documents are required with at least one document being a certified copy of a birth certificate, passport, a national identity card or a citizenship certificate.

40. If the individual has changed his or her name, documentary evidence of this change must be supplied. This could include a copy of a marriage certificate, deed poll or other government-issued certificate that recognises the change.

Regulation 19 – Aboriginal persons or Torres Strait Islanders

41. This regulation provides that an Aboriginal person or a Torres Strait Islander who wishes to open a Registry account, but is unable to meet the proof of identity document requirements for individuals, must give the Administrator a reference by an authorised referee that confirms the individual's identity.

42. An authorised referee includes the chairperson, Secretary or chief executive officer of an incorporated indigenous organisation, the individual's employer, a school principal or school counsellor, a minister of religion, a medical practitioner, a treating health professional and a person who has been a Commonwealth or State or Territory public servant for at least 5 years. The authorised referee must not be the individual's parent, grandparent, sibling, child or grandchild, and may confirm the individual's identity from records within the referee's keeping.

43. This regulation is modelled on the approach adopted by Centrelink in relation to Aboriginal or Torres Strait Islander people who lack conventional identification documentation.

Subdivision 2.2.3 – Proof of identity for entities

Regulation 20 – Entities

44. This regulation, together with regulations 21 and 22, sets out the proof of identity documents that must be provided in relation to non-individuals.

Regulation 21 – Identification of entities

45. This regulation sets out the proof of identity documents that must be provided in relation to a body corporate, including companies, incorporated associations, registered co-operatives, corporations sole and statutory corporations.

46. Bodies corporate must provide a copy of the body's certificate of incorporation and certificate of registration with ASIC or, if the body is not registered in Australia, its certificate of registration with a registry established under foreign legislation. If there is no certificate of incorporation or registration, a document of similar effect must be given. In addition:

- if the body corporate is an incorporated association or a registered cooperative, it must supply other documentary evidence of its existence, such as a copy of its constitution or an annual report;
- if the body corporate is a local governing body, it must supply other documentary evidence that it is a local governing body, such as a copy of its annual report;

- if the body corporate has no ABN, it must supply proof of identity documentation for up to 3 executive officers, unless it is a foreign public company, in which case proof of identity documentation will be required for one executive officer (who is not also the applicant's authorised representative).

Regulation 22 – Identification of trusts

47. This regulation sets out the proof of identity documents that must be provided in relation to a trust.

48. A copy of the trust deed, or an extract that identifies the trustees and beneficiaries (or classes of beneficiaries) must be provided. If there is no trust deed, a document with similar effect, or a copy of the certificate of registration as a trust, must be supplied.

49. Appropriate proof of identity documents for the trustees must also be supplied.

Subdivision 2.2.4 – Administrator must consider evidence of identity etc

Regulation 23 – Administrator to consider evidence of identity etc

50. This regulation provides that before opening a Registry account, the Administrator must review the evidence of identity provided by the applicant, including evidence pertaining to an individual's authorisation to submit a request on behalf of the entity.

51. This regulation also provides that the Administrator must review the evidence of identity provided in relation to the applicant's authorised representative before giving the representative access to the account.

Division 2.3 — Commonwealth Registry accounts

Subdivision 2.3.1—Designation and opening of Commonwealth Registry accounts

Regulation 24 - Designation of Commonwealth Registry accounts

52. This regulation empowers the Administrator to designate a Commonwealth Registry account as an account with any of the names specified in this regulation.

53. This regulation gives effect to Australia's obligation under the Kyoto rules to open specific types of Commonwealth accounts to facilitate the tracking of Kyoto units and Registry transactions by the ITL. It also specifies other accounts necessary for the operation of the CFI.

Regulation 25 - Opening of Commonwealth Registry accounts

54. This regulation empowers the Minister to direct the Administrator to open a new Registry account in the name of the Commonwealth and give that account the designation specified in the direction.

55. This may be necessary to give effect to the Kyoto rules as they are updated from time to

time, to allow for the effective operation of the Registry under those rules and for the purpose of managing ACCUs under the CFI.

Subdivision 2.3.2—Transfer of Kyoto units

Regulation 26 - Kyoto units that cannot be transferred – Commonwealth Registry accounts

56. This regulation provides that Kyoto units that have been transferred to a retirement account, a cancellation account, a replacement account or a relinquished units account cannot be transferred further.

57. A Kyoto unit would only be transferred to a retirement account, for instance, if the unit was going to be used to meet Australia's Kyoto target. It would undermine the compliance regime of the Kyoto Protocol if that unit could then be transferred for an additional use. Similarly, Kyoto units transferred to a cancellation account are for all intents and purposes cancelled, and cannot be transferred to another account.

Division 2.4 — Closing Registry accounts

Regulation 27 - Voluntary closure of Registry accounts

58. This regulation provides that account holders can apply to the Administrator to close an account.

59. Accounts can only be closed if the account has no entries for any ACCUs, Kyoto unit or prescribed international units.

60. The Administrator must comply with the request as soon as practicable after receiving it and the Registry must set out a record of each closure.

Regulation 28 - Unilateral closure of Registry accounts etc.

61. This regulation gives the Administrator power to close an account without the account holder's consent if the account holder has contravened Part 2 of the ANREU Act or Regulations. This is one of a number of powers available to the Administrator to protect the integrity of the Registry. Other powers include the power to defer giving effect to a transfer instruction (section 28A), to refuse to give effect to a transfer instruction (section 28B) and to temporarily suspend the operation of an account (section 28D), where the Administrator is satisfied that it is prudent to do so in order to ensure the integrity of the Registry, to prevent, mitigate or minimise abuse of the Registry or to prevent, mitigate or minimise criminal activity involving the Registry. The power to unilaterally close an account would only be exercised where the use of these other powers was not considered appropriate in the circumstances. The decision to unilaterally close an account is reviewable.

62. The Administrator must give the account holder notice that the account will be closed. This is to give the account holder time to make submissions to the Administrator in relation to the proposed closure and to transfer any units in the account. Any ACCUs, Kyoto units or prescribed international units left in the account immediately before closure will be cancelled.

63. This regulation also provides that the Administrator must not open an account in response to a request from a person if the Administrator has previously closed an account held by the person because the person has contravened Part 2 of the ANREU Act or Regulations.

Division 2.5—Change in name of account holder

Regulation 29 - Altering the Registry

64. This regulation empowers the Administrator to make necessary changes to the Registry to reflect an account holder's change of name.

65. Account holders are required to notify the Administrator of any change in their name in accordance with regulation 33.

Division 2.6—Miscellaneous

Regulation 30 - Registry requirements

66. This regulation identifies subsections 5(2) and 27(1) of the ANREU Act as the source of power to make the regulations in this Division.

Regulation 31 - Authorised representatives – access to Registry account

67. This regulation provides for the approval of authorised representatives.

68. Authorised representatives can act on behalf of an account holder in relation to the holder's account. For example, authorised representatives will be able to view account details, initiate transactions, approve transactions and send electronic notices in relation to Kyoto units.

69. An authorised representative must be an individual. The Administrator will only approve an individual for these purposes if satisfied of their identity. If the Administrator is not satisfied of their identity, the Administrator will notify the account holder and require the holder to nominate another authorised representative.

Regulation 32 – Authorised representatives - nomination after registration

70. This regulation provides for changes in an account holder's authorised representative.

71. There can be more than one authorised representative, and authorised representatives can be changed. Any change must be notified to the Administrator in the approved form. The Administrator will only approve a change if satisfied of the identity of the new authorised representative.

72. Any change in the authorised representative's contact details must also be notified to the Administrator.

Regulation 33 - Requirement to notify the Administrator

73. This regulation requires account holders to notify the Administrator of various matters using the approved form within 28 business days of the event, including:

- any change in the holder's name or contact details; and
- any incorrectly transferred ACCUs, Kyoto units or prescribed international units.

74. Non-compliance with this notification requirement can attract a civil penalty: subsections 27(4), (5) and (6) of the ANREU Act.

Regulation 34 - Requirements about dealings with the Registry

75. This regulation provides that account holders must not attempt to, or gain, unauthorised access to the Registry, and must use all reasonable efforts to ensure that third parties do not gain unauthorised access to the Registry.

76. This regulation also provides that account holders must not damage or corrupt, or try to damage or corrupt, any software or data related to the Registry, or initiate a transaction in relation to an ACCU, a Kyoto unit or prescribed international units that the holder knows, or ought reasonably to know, has been incorrectly transferred to the holder's account.

77. Non-compliance with these requirements can attract a civil penalty: subsections 27(4), (5) and (6) of the ANREU Act.

Regulation 35 - Administrator may request information

78. This regulation empowers the Administrator to require a person to provide further information in relation to any request made under the Regulations.

79. Non-compliance with this requirement can attract a civil penalty: subsections 27(4), (5) and (6) of the ANREU Act.

PART 3—KYOTO UNITS

Division 3.1 – Transfer of Kyoto units

Regulation 36 - Domestic transfers of Kyoto units

80. This regulation provides that an instruction to transfer Kyoto units between Registry accounts must set out the serial number of the units in the proposed transfer.

81. Kyoto units only exist within the international electronic registry system established under the Kyoto rules. Each unit has a serial number made up of a number of different elements which, when combined, create a unique identifier for the unit, allowing the unit to be tracked throughout the registry system.

82. At present, the Registry's user interface allows an account holder to identify units for transfer by selecting a quantity of units from within a block of homogenous units. These blocks identify the Kyoto Party that issued the units, the type of unit, the Kyoto commitment period for which the unit was issued, the CFI and/or Kyoto project number and the vintage (year of issuance). Selecting units in this way is the user interface's method of allowing an account holder to specify the serial numbers of the units to be transferred.

Regulation 37- Outgoing international transfers of Kyoto units

83. This regulation specifies the information that must accompany an instruction to transfer Kyoto units from the Registry to a foreign account.

84. As is the case with domestic transfers of Kyoto units, the instruction must set out the units in the proposed transfer and the serial number of the units. The instructions must also set out the type and account number of the foreign account, and the country where the foreign account is kept.

85. These requirements give effect to the Kyoto rules. They are consistent with the normal process of the international registry system and are designed to ensure that units can be appropriately transferred and tracked between different accounts and national registries.

Regulation 39 - Kyoto rules - outgoing international transfers of Kyoto units

86. This regulation sets out the requirements for the transfer of a Kyoto unit from a Registry account to a foreign account.

87. All national registries under the Kyoto Protocol are linked by the ITL. The ITL validates the transfer of Kyoto units and their conformity with the Kyoto rules. A transfer cannot go ahead if the ITL finds a discrepancy or the acquiring foreign registry rejects the transfer.

88. This regulation requires the Administrator to provide a transfer instruction to the ITL as soon as practicable after the instruction has been received. If the ITL approves the proposed transaction, the Administrator must give effect to the instruction in accordance with the Kyoto rules. The Administrator must remove the entry of units from the relevant Registry account, and notify the ITL of the action taken.

89. If the ITL rejects the transaction or advises that a discrepancy exists with the instruction or the proposed transfer, the Administrator must not give effect to the instruction. The Administrator must make a record in the Registry that the instruction has not been carried out, and notify the ITL of the cancellation of the proposed transfer.

Regulation 40 – Kyoto rules – incoming international transfers of Kyoto units

90. This regulation sets out the requirements for the transfer of a Kyoto unit from a foreign account to a Registry account.

91. If the ITL notifies the Administrator that an instruction from a holder of a foreign

account has been accepted, the Administrator must give effect to the instruction as soon as practicable. The Administrator must make an entry for the unit in the relevant Registry account, make a record in the Registry and notify the ITL of the action taken.

92. If the ITL rejects the transaction, or advises that a discrepancy exists with the instruction or the proposed transfer, the Administrator must not give effect to the instruction. The Administrator must make a record in the Registry that the instruction has not been carried out, and notify the ITL of the cancellation of the proposed transfer.

93. The Kyoto rules also include a provision limiting the amount of units from afforestation and reforestation activities under the CDM that a country may hold during the Kyoto Protocol's first commitment period. A developed country with a target under the Kyoto Protocol may not hold units from these activities (i.e. temporary and long-term certified emission reductions) totalling more than 1% of its base year emissions times five. For Australia, this represents a limit of no more than 27,384,992 temporary and long-term certified emission reduction units during the first commitment period. In order to give effect to this rule, the Administrator must not give effect to an instruction if the instruction would place Australia in breach of this cap.

Regulation 41 - Commitment period reserve

94. This regulation provides that the Administrator must not give effect to an instruction to transfer a Kyoto unit or a Kyoto ACCU to a foreign account, or voluntarily cancel a Kyoto unit, if the transfer or cancellation would result in Australia failing to maintain its commitment period reserve.

95. The Kyoto rules require Parties to maintain a minimum level of assigned amount units, removal units, emission reduction units and/or certified emission reductions in their national registry in order to ensure that Parties do not 'oversell' their units and become unable to meet their emissions targets. This minimum level of units is known as the 'commitment period reserve'. Parties are required to maintain a reserve of holdings of 90% of their assigned amount calculated pursuant to Article 3, paragraphs 7 and 8, of the Kyoto Protocol, or five times their most recently reviewed inventory, whichever is lowest.

96. At present, Kyoto ACCUs cannot be transferred directly to a foreign account, but can be exchanged for a Kyoto unit. Should Kyoto ACCUs be able to be transferred directly to a foreign account, a Kyoto unit from the Government's holding account would be cancelled for each Kyoto ACCU transferred. This ensures that the action taken to obtain the Kyoto ACCU is not double counted both in Australia and overseas.

Division 3.2 – Dealings with emission reductions under the Kyoto rules

Subdivision 3.2.1 – Cancellation of expired temporary certified emission reductions or long-term certified emission reductions

Regulation 42 - Cancellation after expiry

97. This regulation specifies the procedure the Administrator must follow if a temporary

certified emission reduction or a long-term certified emission reduction expires.

98. A temporary certified emission reduction is defined in 5/CMP.1, Annex, paragraph 1(g). It is issued for sequestration achieved by afforestation or reforestation projects under the CDM, and expires at the end of the commitment period following the one in which it is issued.

99. A long-term certified emission reduction is defined in 5/CMP.1, Annex, paragraph 1(h). It is issued for sequestration achieved by afforestation or reforestation projects under the CDM, and expires at the end of the crediting period of the project activity for which it was issued.

100. Under the Kyoto rules, Parties must transfer a temporary certified emission reduction or long-term certified emission reduction to a mandatory cancellation account when it expires. This is because units for afforestation or reforestation projects under the CDM have a limited period of validity, then expire. If the sequestration continues beyond the life of the credits, new credits may be issued for another period. This helps to ensure that credits are only issued for sequestration that is maintained.

101. This regulation provides the procedure for the Administrator to transfer an expired temporary certified emission reduction or long-term certified emission reduction to a mandatory cancellation account, and provides for the Administrator to notify the registered holder of the requirement for transfer, as well as action taken.

102. A failure by the Administrator to observe the notification requirements does not invalidate a transfer by the Administrator.

Subdivision 3.2.2 – Replacement and cancellation of long-term certified emission reductions

Regulations 43-46 – Replacement or cancellation of long-term certified emission reductions

103. These regulations specify the circumstances in which a person will be required to replace a long-term certified emission reduction and the procedure the Administrator must follow if the person fails to replace it.

104. The Kyoto rules specify that long-term certified emission reductions which have expired must be replaced by other Kyoto units (5/CMP.1, Annex, paragraphs 48-50). They must also be replaced if the independent auditor under the CDM certifies that the quantities of greenhouse gas removals have reversed since the last certification report, or if a certification report has not been provided.

105. These regulations specify the requirements for the replacement of long-term certified emission reductions. The Administrator will transfer the long-term certified emission reductions to a mandatory cancellation account in the event they are not replaced in accordance with these requirements.

106. These regulations specify the notice requirements the Administrator must provide to the registered holder to replace or cancel long-term certified emission reductions. A failure by the Administrator to observe the notification requirements does not invalidate a transfer by the Administrator.

107. These regulations also specify the method for calculating the amount of long-term certified emission reductions to be replaced by Kyoto units and the date according to which the replacement must occur.

108. These regulations place a block on transfers of other long-term certified emission reductions from a project identified under regulation 44 or 45 until any requirement for the replacement of units has occurred. This removes the incentive for a registered holder to try to sell down their holdings of long-term certified emission reductions from an affected project in order to minimise the number of units they might be liable to replace or cancel.

Division 3.3 – Other matters relating to Kyoto units

Regulation 47 - Restrictions on transfer of Kyoto units to a Commonwealth Registry account

109. This regulation sets out restrictions on the transfer of a Kyoto unit from a Registry account, or a foreign account, to a Commonwealth Registry account.

110. The Administrator may transfer a Kyoto unit to a Commonwealth Registry account only if the relevant commitment period of the unit is valid under the Kyoto rules for transfer to the account. This prevents, for example, a Kyoto unit issued under a subsequent commitment period being retired to acquit Australia's obligations under the first commitment period (which would be against the Kyoto rules).

111. The Administrator must not transfer a temporary certified emission reduction or long-term certified emission reduction from a Registry account, other than a Commonwealth Registry account, to a retirement account. This prevents the registered holder from mistakenly transferring a unit into a retirement account from which the unit could not be retrieved. It would also remove the possibility of the Commonwealth being obliged to take on an ongoing replacement liability for such a unit as part of its obligations to meet its Kyoto target, except where it explicitly chooses to do so.

Regulation 48 – A registered Kyoto unit is personal property for certain purposes

112. This regulation provides that a Kyoto unit is personal property for the purposes of the *Proceeds of Crimes Act 2002*.

113. This purpose is in addition to the purposes listed in paragraphs (a), (b) and (c) of section 45(2) of the ANREU Act.

Regulation 49 - Transmission of Kyoto units by operation of law

114. This regulation specifies the evidence of any transmission of Kyoto units by will or by devolution by operation of law that must be provided to the Administrator, and specifies how a declaration of transmission must be made.

115. Transmission of Kyoto units by operation of law may occur for the purposes of the *Bankruptcy Act 1966*, Chapter 5 of the *Corporations Act 2001* (which relates to external administration of corporations), the *Proceeds of Crime Act 2002* and the law relating to wills,

intestacy and deceased estates (section 45 and regulation 48).

116. Within 90 days of transmission, the transferee must give the Administrator a written declaration that identifies the serial numbers of the Kyoto units to be transferred, sets out the contact and Registry details for the transferor and transferee and briefly describes the circumstances that resulted in the transmission (for example, the bankruptcy or death of the transferor).

117. Documentary evidence of the transmission must also be given to the Administrator. For example, if the transmission occurs on the making of a court order, a certified copy of the court order must be provided; if the transmission occurs by reason of the death of the transferor, a certified copy of the probate of the will or letters of administration of the estate should be provided.

PART 5—PUBLICATION OF INFORMATION

Regulation 50 – Kyoto information

118. This regulation provides that the Administrator must publish on its website the information required to be made publicly available under paragraphs 44 to 48 of the Annex to Decision 13/CMP.1 of the Meeting of the Kyoto Parties.

119. These requirements are available on the United Nations Framework Convention on Climate Change website (<http://unfccc.int/resource/docs/2005/cmp1/eng/08a02.pdf>).