

EXPLANATORY STATEMENT

Select Legislative Instrument 2012 No. 33

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

Australian National Registry of Emissions Units Act 2011

Carbon Credits (Carbon Farming Initiative) Act 2011

National Greenhouse and Energy Reporting Act 2007

Renewable Energy (Electricity) Act 2000

Climate Change Legislation Amendment Regulation 2012 (No. 1)

The *Clean Energy Act 2011*, together with the other Acts in the Clean Energy Legislative Package, implements the Government's climate change plan, as set out in *Securing a clean energy future: the Australian Government's climate change plan*. As part of this plan, the Clean Energy Regulator— established by the *Clean Energy Regulator Act 2011*— will take on statutory functions under a range of existing Acts.

In particular, the Clean Energy Regulator will take on the functions of:

- the Carbon Credits Administrator under the *Australian National Registry of Emissions Units Act 2011* and the *Carbon Credits (Carbon Farming Initiative) Act 2011*;
- the Greenhouse and Energy Data Officer under the *National Greenhouse and Energy Reporting Act 2007*; and
- the Renewable Energy Regulator under the *Renewable Energy (Electricity) Act 2000*.

The *Climate Change Legislation Amendment Regulation 2012 (No. 1)* (the Regulation) amends the *Australian National Registry of Emissions Units Regulations 2011*, the *Carbon Credits (Carbon Farming Initiative) Regulations 2011*, the *National Greenhouse and Energy Reporting Regulations 2008* and the *Renewable Energy (Electricity) Regulations 2001* to reflect this transfer of functions.

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

Background information is set out in Attachment B.

Details of the Regulation are set out in Attachment C.

A statement of the Regulation's compatibility with human rights is set out in Attachment D.

Consultation

The Clean Energy Legislative Package reflects the outcomes of comprehensive consultation with the public and stakeholders.

- In September 2010 the Government announced the establishment of the Multi-Party Climate Change Committee (MPCCC) to consult, negotiate, and report to the Cabinet, through the Minister for Climate Change and Energy Efficiency, on agreed options for the implementation of a carbon price in Australia, and to provide advice on, and participate in, building community consensus for action on climate change.
- On 24 February 2011, the Prime Minister announced the climate change framework outlining the broad architecture for a carbon pricing mechanism, which had been considered by the MPCCC.
- The Department of Climate Change and Energy Efficiency conducted a public consultation process on the proposed mechanism in April and May 2011.
- On 10 July 2011, the Government published *Securing a clean energy future: The Australian Government's climate change plan*.
- On 28 July 2011, the Government released draft bills of the legislation included in the Clean Energy Legislative Package, and received over 300 submissions on those bills.
- Since the passage of the Clean Energy Legislative Package, the Government has consulted extensively with those covered by the mechanism and related reforms in relation to implementation and compliance issues.

The proposed amendments are administrative in nature and reflect machinery of Government changes associated with the establishment of the Clean Energy Regulator, with no effect on business. Consultation on the amendments was therefore not required.

Authority: Section 97 of the *Australian National Registry of Emissions Units Act 2011*; section 307 of the *Carbon Credits (Carbon Farming Initiative) Act 2011*; section 77 of the *National Greenhouse and Energy Reporting Act 2007*; section 161 of the *Renewable Energy (Electricity) Act 2000*

Glossary

The following abbreviations are used throughout this explanatory statement

<i>Abbreviation</i>	<i>Definition</i>
ANREU Act	<i>Australian National Registry of Emissions Units Act 2011</i>
ANREU Regulations	<i>Australian National Registry of Emissions Units Regulations 2011</i>
CFI Act	<i>Carbon Credits (Carbon Farming Initiative) Act 2011</i>
CFI Regulations	<i>Carbon Credits (Carbon Farming Initiative) Regulations 2011</i>
Clean Energy Act	<i>Clean Energy Act 2011</i>
Clean Energy Legislative Package	<p>A package of Acts including:</p> <ul style="list-style-type: none"> • <i>Clean Energy Act 2011;</i> • <i>Clean Energy (Consequential Amendments) Act 2011;</i> • <i>Clean Energy Regulator Act 2011;</i> • <i>Climate Change Authority Act 2011;</i> • <i>Clean Energy (Unit Shortfall Charge—General) Act 2011;</i> • <i>Clean Energy (Unit Issue Charge—General) Act 2011;</i> • <i>Clean Energy (Charges—Excise) Act 2011;</i> • <i>Clean Energy (International Unit Surrender Charge) Act 2011;</i> • <i>Ozone Protection and Synthetic Greenhouse Gas (Manufacture Levy) Amendment Act 2011;</i> • <i>Ozone Protection and Synthetic Greenhouse Gas (Import</i>

	<p><i>Levy) Amendment Act 2011;</i></p> <ul style="list-style-type: none"> • <i>Fuel Tax Legislation Amendment (Clean Energy) Act 2011;</i> • <i>Excise Tariff Legislation Amendment (Clean Energy) Act 2011;</i> • <i>Customs Tariff Amendment (Clean Energy) Act 2011.</i>
NGER Act	<i>National Greenhouse and Energy Reporting Act 2007</i>
NGER Regulations	<i>National Greenhouse and Energy Reporting Regulations 2008</i>
REE Act	<i>Renewable Energy (Electricity) Act 2000</i>
REE Regulations	<i>Renewable Energy (Electricity) Regulations 2001</i>
Registry	Australian National Registry of Emissions Units
Regulation	<i>Climate Change Legislation Amendment Regulation 2012 (No. 1)</i>

Legislative authority for the Regulation

The Regulation is supported by the following legislative provisions:

- *Australian National Registry of Emissions Units Act 2011*, section 97 together with:
 - subsection 5(2)
 - subsection 10(1)
 - subsection 11(1)
 - sections 12 and 13
 - subsection 15(1)
 - subsection 16(1)
 - section 18
 - subsection 27(1)
 - subsection 39(1)
 - subsection 41(1)
 - subsection 42(2)
 - sections 43 and 44
 - subsection 47(2)
 - subsection 60(1).
- *Carbon Credits (Carbon Farming Initiative) Act 2011*, section 307 together with:
 - subsection 7(2)
 - subsection 23(1)
 - subsection 41(1)
 - subsection 55(1)

- subsection 56(1)
- subsection 61(1)
- subsection 64(3)
- subsection 65(1)
- 95(4).
- *National Greenhouse and Energy Reporting Act 2007*, section 77 together with:
 - subsection 8(6)
 - section 15
 - subsection 16(4)
 - subsection 18(2)
 - subsection 19(6)
 - subsection 20(2)
 - subsections 75A(2) and (5).
- *Renewable Energy (Electricity) Act 2000*, section 161 together with:
 - subsection 20(2)
 - subsection 30K(2)
 - subsection 30M(2)
 - subsection 30U(2)
 - subsection 44(2)
 - subsections 46(3) and (5).

Background information

ANREU Act and ANREU Regulations

The ANREU Act provides the legislative basis for the Australian National Registry of Emissions Units. The Registry tracks the location and ownership of Australian carbon credit units —issued under the CFI Act — and meets Australia’s ongoing obligations under the Kyoto Protocol. Upon commencement of the Clean Energy Act, the Registry will also act as the Registry for carbon units issued under that Act. The Carbon Credits Administrator is currently responsible for maintaining the Registry.

The ANREU Regulations provide necessary details supporting the administration of the ANREU Act.

CFI Act and CFI Regulations

The CFI Act establishes the Carbon Farming Initiative (the CFI). The CFI is a voluntary scheme that aims to provide incentives for the agricultural, landfill and forestry sectors to minimise greenhouse gas emissions or maximise carbon storage by altering their agricultural, landfill and forestry practices. The CFI is currently administered by the Carbon Credits Administrator.

The CFI Regulations provide necessary details supporting the administration of the CFI Act.

NGER Act and NGER Regulations

The NGER Act makes it mandatory for certain corporations to report annually on their greenhouse gas emissions, energy consumption and energy production. Reported data will inform decision making under the carbon pricing mechanism, assist Australia to meet its international reporting obligations and inform government policy and programs and the Australian public. The NGER Act is currently administered by the Greenhouse and Energy Data Officer.

The NGER Regulations provide necessary details supporting the administration of the NGER Act.

REE Act and REE Regulations

The REE Act establishes the Renewable Energy Target (RET) to encourage electricity generation from eligible energy sources. The RET is designed to ensure that the equivalent of 20 per cent of Australia’s electricity supply is generated from renewable sources by 2020. The RET is currently administered by the Renewable Energy Regulator.

The REE Regulations provide necessary details supporting the administration of the REE Act.

Details of the Regulation

1 – Name of Regulation

Section 1 provides that the name of the Regulation is the *Climate Change Legislation Amendment Regulation 2012 (No. 1)*.

2 – Commencement

Section 2 provides that the Regulation commences on the commencement of section 3 of the *Clean Energy Act 2011*. Section 3 of that Act commences on 2 April 2012.

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

Section 3 provides that Schedule 1 to the Regulation amends the ANREU Regulations.

4 – Amendment of *Carbon Credits (Carbon Farming Initiative) Regulations 2011*

Section 4 provides that Schedule 2 to the Regulation amends the CFI Regulations.

5 – Amendment of *National Greenhouse and Energy Reporting Regulations 2008*

Section 5 provides that Schedule 3 to the Regulation amends the NGER Regulations.

6 – Amendment of *Renewable Energy (Electricity) Regulations 2001*

Section 6 provides that Schedule 4 to the Regulation amends the REE Regulations.

SCHEDULE 1 – Amendments to the *Australian National Registry of Emissions Units Regulations 2011*

Item [1] – Subregulation 17(1)

Item [1] replaces subregulation 17(1) of the ANREU Regulations. The effect of subregulation 17(1) is that an applicant to open a Registry account is not required to submit a proof of identity document if the applicant:

- is registered under the NGER Act or the REE Act; and
- has previously submitted the document in accordance with the registration requirements under those Acts to the Greenhouse and Energy Data Officer or the Renewable Energy Regulator or, after 2 April 2012, to the Clean Energy Regulator.

If the document previously submitted is no longer current, a current version of the document

must be resubmitted.

Items [2] and [3] – Further amendments — ‘Administrator’ and ‘Administrator’s’

Items [2] and [3] omit each mention of ‘Administrator’ or ‘Administrator’s’ in the ANREU Regulations and insert ‘Regulator’ or ‘Regulator’s’, as appropriate. This gives effect to the transfer of functions and powers from the Carbon Credits Administrator to the Clean Energy Regulator.

SCHEDULE 2 – Amendments to the *Carbon Credits (Carbon Farming Initiative) Regulations 2011*

Item [1] – Regulation 1.3, note

Item [1] inserts ‘Regulator’ into the note at the end of regulation 1.3. Regulation 1.3 lists words and expressions used in the CFI Regulations which are defined in section 5 of the CFI Act.

Item [2] – Subregulation 1.10(1)

Item [2] omits ‘Administrator’s’ in subregulation 1.10(1) and inserts ‘Regulator’s’. This gives effect to the transfer of functions and powers from the Carbon Credits Administrator to the Clean Energy Regulator.

Item [3] – Subregulation 4.3(1)

Item [3] replaces subregulation 4.3(1) of the CFI Regulations. The effect of subregulation 4.3(1) is that an applicant for recognition as an offsets entity is not required to submit a proof of identity document if the applicant:

- is registered under the NGER Act or the REE Act; and
- has previously submitted the document in accordance with the registration requirements under those Acts to the Greenhouse and Energy Data Officer or the Renewable Energy Regulator or, after 2 April 2012, to the Clean Energy Regulator.

If the document previously submitted is no longer current, a current version of the document must be resubmitted.

Item [4] – Further amendments

Item [4] omits each mention of ‘Administrator’ in the CFI Regulations and inserts ‘Regulator’. This gives effect to the transfer of functions and powers from the Carbon Credits Administrator to the Clean Energy Regulator.

SCHEDULE 3 – Amendments to the *National Greenhouse and Energy Reporting Regulations 2008*

Item [1] - Regulation 1.03, note

Item [1] substitutes the note at the end of regulation 1.03. Regulation 1.3 lists words and expressions used in the NGER Regulations which are defined in the NGER Act. The note omits ‘Greenhouse and Energy Data Officer’ and includes ‘official of the Regulator’ and ‘Regulator’. This gives effect to the transfer of functions and powers from the Greenhouse and Energy Data Officer to the Clean Energy Regulator.

Item [2] – Paragraph 6.40(1)(a)

Item [2] substitutes paragraph 6.40(1)(a) of the NGER Regulations, so that an official of the Clean Energy Regulator may be appointed to undertake an inspection under the NGER Act. This gives effect to the transfer of functions and powers from the Greenhouse and Energy Data Officer to the Clean Energy Regulator.

Items [3] and [4] – Further amendments—single mentions and multiple mentions

Items [3] and [4] omit each mention of ‘Greenhouse and Energy Data Officer’ in the NGER Regulations and insert ‘Regulator’. This gives effect to the transfer of functions and powers from the Greenhouse and Energy Data Officer to the Clean Energy Regulator.

SCHEDULE 4 – Amendments to the *Renewable Energy (Electricity) Regulations 2001*

Item [1] – Regulation 3A, note

Item [1] substitutes the note at the end of regulation 3A of the REE Regulations, so that it gives the details of the Clean Energy Regulator instead of the details of the Office of the Renewable Energy Regulator. This gives effect to the transfer of functions and powers from the Renewable Energy Regulator to the Clean Energy Regulator.

Item [2] – Further amendments—Renewable Energy Regulator

Item [2] inserts ‘or the Renewable Energy Regulator’ after references to ‘the Regulator’ in paragraphs 18(1)(f), 20H(3)(a), 20K(5)(a) and 20M(2)(a) of the REE Regulations. This is in recognition that references to ‘the Regulator’ in the REE Regulations are now references to the Clean Energy Regulator and not the Renewable Energy Regulator.

Item [3] – Further amendments— Office of the Renewable Energy Regulator

Item [3] omits each mention of ‘Office of the Renewable Energy’ in the REE Regulations, so that the Regulations refer simply to ‘the Regulator’. This gives effect to the transfer of functions and powers from the Renewable Energy Regulator to the Clean Energy Regulator.

Statement of Compatibility with Human Rights

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

Climate Change Legislation Amendment Regulation 2012 (No. 1)

This 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 Climate Change Legislation Amendment Regulation 2012 (No. 1)

The Regulation makes consequential amendments to the *Australian National Registry of Emissions Units Regulations 2011*, the *Carbon Credits (Carbon Farming Initiative) Regulations 2011*, the *National Greenhouse and Energy Reporting Regulations 2008* and the *Renewable Energy (Electricity) Regulations 2001* to reflect the transfer of functions from the Carbon Credits Administrator, the Greenhouse and Energy Data Officer and the Renewable Energy Regulator to the Clean Energy Regulator.

Human rights implications

The Regulation engages the right to privacy and reputation.

The legislative instruments amended by the Regulation provide for the collection of personal information by the Carbon Credits Administrator, the Greenhouse and Energy Data Officer and the Renewable Energy Regulator. The Regulation amends these instruments so that personal information will instead be collected by the Clean Energy Regulator.

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 to be collected is necessary for the identification of applicants under the various schemes established by the enabling legislation for the amended instruments;
- the Clean Energy Regulator will be subject to the secrecy provisions in the *Clean Energy Regulator Act 2011*; and
- those secrecy provisions mirror the secrecy provisions applying to the Carbon Credits Administrator, the Greenhouse and Energy Data Officer and the Renewable Energy Regulator.

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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