

EXPLANATORY STATEMENT

Select Legislative Instrument 2012 No. 288

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. 3)*

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 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*, Australian carbon credit units issued under the *Carbon Credits (Carbon Farming Initiative) Act 2011* and meets Australia's ongoing obligations under the Kyoto Protocol to the United Nations Framework Convention on Climate Change.

The detailed rules about opening and operating Registry accounts are set out in the *Australian National Registry of Emissions Units Regulations 2011* (the ANREU Regulations).

A Registry account may be held by an individual or a non-individual (a body corporate, trust, corporation sole, body politic or local governing body). Non-individual account holders must nominate one or more individuals (referred to as authorised representatives) to operate their account. Individual account holders may nominate one or more authorised representatives (regulation 9(2) of the ANREU Regulations). A nominated authorised representative can only be given access to an account, however, if the Clean Energy Regulator (the Regulator) is satisfied of the nominee's identity and that the nominee meets the fit and proper person criteria (regulation 31(2) of the ANREU Regulations). In assessing whether the nominee meets the fit and proper person criteria, the Regulator has regard to a number of matters, including whether the nominee has been convicted of an offence relating to dishonesty, complied with relevant scheme legislation, or is an insolvent under administration.

If the Regulator is not satisfied of the nominee's identity, the Regulator is required to notify the account holder that the nominee has been denied access to the account, and give reasons for that denial (regulation 31(4) of the ANREU Regulations). The *Australian National Registry of Emissions Units Amendment Regulation 2012 (No. 3)* (the Regulation) extends this notification requirement so that it also applies if access to the account has been denied because the Regulator is not satisfied that the nominee meets the fit and proper person criteria. Notification in these circumstances ensures that the account holder has an opportunity to nominate another person who can be given access to the account. The Regulation also empowers the Regulator to deny a representative continued access to an account if, at any point, the Regulator is no longer satisfied that the representative is fit and proper.

The Regulation also makes minor technical amendments to the ANREU Regulations.

Details of the Regulation are set out in Attachment A.

A Human Rights Statement is set out in Attachment B.

The Regulation is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

The Regulation commences on the day after it is registered.

Consultation

The amendments relating to authorised representatives are consequential on earlier amendments to the ANREU Regulations which imposed the fit and proper person requirement on authorised representatives and required an account holder to notify the Regulator if there is any change in relation to whether the authorised representative continues to meet the fit and proper person criteria. Consultation on these provisions was therefore not considered necessary or appropriate.

Consultation was also not considered necessary or appropriate for the remaining provisions, which correct minor technical errors in the ANREU Regulations.

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

Details of the Australian National Registry of Emissions Units Amendment Regulation 2012 (No. 3)

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. 3)*.

2 – Commencement

Section 2 provides that the Regulation commences on the day after it is registered.

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

Section 3 provides that Schedule 1 to the Regulation amends the *Australian National Registry of Emissions Units Regulations 2011* (the ANREU Regulations).

Schedule 1 – Amendment

Item [1] – Subregulation 10(4)

Item [1] corrects a minor typographical error in subregulation 10(4) by removing the incorrect reference to subregulation 10(2) and replacing it with a reference to subregulation 10(3).

Item [2] – Paragraph 24(f)

Item [2] corrects a minor typographical error in paragraph 24(f) by redesignating the ‘Australian carbon credit exchange account’ as the ‘Australian carbon credit unit exchange account’.

Items [3]-[4] – After subregulation 28(3) and Subregulation 28(4), heading

Items [3]-[4] correct a minor typographical error in regulation 28 by moving the heading ‘Cancellation or transfer of units’ from above subregulation 28(4) to above subregulation 28(3A).

Item [5] – Paragraph 31(1)(a)

Item [5] corrects a minor typographical error in paragraph 31(1)(a) by replacing the reference to ‘subregulation (9)(2)’ with a reference to ‘subregulation 9(2)’.

Item [6] – Subregulation 31(4)

Subregulation 31(2) provides that the Clean Energy Regulator (the Regulator) must not give a nominated authorised representative access to an Australian National Registry of Emissions Units account unless the Regulator is satisfied of the nominee’s identity and that the nominee meets the fit and proper person criteria. Subregulation 31(4) provides that if the Regulator is not satisfied of the nominee’s identity, the Regulator must notify the account holder that the nominee has been denied access to the account, and give reasons for that denial. Item [6]

amends subregulation 31(4) so that this notification requirement also applies if the nominee has been denied access to the account because the Regulator is not satisfied that the nominee meets the fit and proper person criteria. This ensures that the account holder has an opportunity to nominate another person who can be given access to the account.

Item [7] – After subregulation 31(4)

Account holders are required to notify the Regulator if there is any change in relation to whether an authorised representative continues to meet the fit and proper person criteria (paragraph 33(1)(e)). Item [7] inserts new subregulation 31(5), which empowers the Regulator to deny an authorised representative continued access to an account if the Regulator is no longer satisfied that the representative meets the fit and proper person criteria.

Item [7] also inserts new subregulation 31(6), which requires the Regulator to notify the account holder if the authorised representative has been denied continued access to the account, and give reasons for that denial. This ensures that the account holder has an opportunity to nominate another person who can be given access to the account.

ATTACHMENT B**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. 3)

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 Australian National Registry of Emissions Units Amendment Regulation 2012 (No. 3)

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

- require the Clean Energy Regulator (the Regulator) to notify an account holder if their nominated authorised representative has been denied access to their account (item 6);
- empower the Regulator to deny an authorised representative continued access to an account if the Regulator is no longer satisfied that the representative is fit and proper (item 7); and
- correct minor typographical errors (items 1-5).

Human rights implications

The Regulation engages the right to privacy and reputation.

The Australian National Registry of Emissions Units (the Registry) tracks the location and ownership of carbon units issued under the *Clean Energy Act 2011*, Australian carbon credit units issued under the *Carbon Credits (Carbon Farming Initiative) Act 2011* and meets Australia's ongoing obligations under the Kyoto Protocol to the United Nations Framework Convention on Climate Change.

A Registry account may be held by an individual or a non-individual (a body corporate, trust, corporation sole, body politic or local governing body). Non-individual account holders must nominate one or more individuals (referred to as authorised representatives) to operate their account. Individual account holders may nominate one or more authorised representatives (regulation 9(2) of the ANREU Regulations). A nominated authorised representative can only be given access to an account, however, if the Regulator is satisfied of the nominee's identity and that the nominee meets the fit and proper person criteria (regulation 31(2) of the ANREU Regulations). In assessing whether the nominee meets the fit and proper person criteria, the Regulator has regard to a number of matters, including whether the nominee has been convicted of an offence relating to dishonesty, complied with relevant scheme legislation, or

is an insolvent under administration. This is one of a number of measures designed to reduce the risk of fraud and deceptive or unfair conduct in the Registry.

Subregulation 31(4) provides that if the Regulator is not satisfied of the nominee's identity, the Regulator is required to notify the account holder that the nominee has been denied access to the account, and give reasons for that denial. Item [6] of the Regulation amends subregulation 31(4) so that this notification requirement also applies if access to the account has been denied because the Regulator is not satisfied that the nominee meets the fit and proper person criteria. Item [7] of the Regulation empowers the Regulator to deny an authorised representative continued access to the account if, at any point, the Regulator is no longer satisfied that the representative is fit and proper, and requires the Regulator to notify the account holder that this access has been denied, and the reasons why.

The notification of these matters may involve the disclosure of personal information about the nominated authorised representative. While the disclosure of personal information limits the right to privacy, the Regulation is not considered to be incompatible with this right. The disclosure is not at large, but is restricted to the account holder. The notification serves to promote transparency in the Regulator's decision-making process, and gives the account holder an opportunity to either contest the decision or nominate another authorised representative who can be given access to the account. In dealing with personal information about the nominated authorised representative, the Regulator is otherwise subject to the secrecy provisions in Part 3 of the *Clean Energy Regulator Act 2011*.

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

Minister for Climate Change and Energy Efficiency