

EXPLANATORY STATEMENT

Select Legislative Instrument 2013 No. 78

Issued by the Authority of the Minister for Climate Change, Industry and Innovation

Clean Energy Legislation Amendment (International Linking) Regulation 2013

Australian National Registry of Emissions Units Act 2011

Carbon Credits (Carbon Farming Initiative) Act 2011

Clean Energy Act 2011

Section 97 of the *Australian National Registry of Emissions Units Act 2011* (the ANREU Act), section 312 of the *Clean Energy Act 2011* (the CE Act) and section 307 of the *Carbon Credits (Carbon Farming Initiative) Act 2011* (the CFI Act) provide, in part, that the Governor-General may make regulations prescribing matters required or permitted to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to each of these Acts.

The ANREU Act provides the legislative basis for the Australian National Registry of Emissions Units (the Australian Registry). The Australian Registry tracks the ownership of carbon units issued under the CE Act, Australian carbon credit units issued under the CFI Act and Australian-issued international units (AIUs) issued under the ANREU Act. It also meets Australia's ongoing obligations under the Kyoto Protocol to the United Nations Framework Convention on Climate Change.

The CFI Act establishes the Carbon Farming Initiative (CFI), 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 CE Act, together with other associated Acts in the Clean Energy Legislative Package, establishes the carbon pricing mechanism as part of the Government's climate change plan, as set out in the document, *Securing a Clean Energy Future: the Australian Government's Climate Change Plan*.

The *Clean Energy Legislation Amendment (International Linking) Regulation 2013* (International Linking Amendment Regulation) amends the *Australian National Registry of Emissions Units Regulations 2011* (the Principal ANREU Regulation), the *Carbon Credits (Carbon Farming Initiative) Regulations 2011* (the Principal CFI Regulation) and the *Clean Energy Regulations 2011* (the Principal CE Regulation) to facilitate a one-way indirect link between the Australian Registry and the European Union Registry (Union Registry) by:

- setting out the conditions for the issuance of AIUs in the Australian Registry;
- specifying the treatment of AIUs that are cancelled or relinquished;
- establishing the process for 'swapping-back' AIUs for European allowance units in the Union Registry;
- establishing the process for suspending the operation of the indirect link with the

Union Registry;

- setting out arrangements for the automatic exchange of AIUs for European allowance units in the transition to a direct link with the Union Registry;
- clarifying that an Australian carbon credit unit cannot be exported unless provided for in an operational international arrangement; and
- establishing the process for the Clean Energy Regulator if an eligible international emissions unit is surrendered to meet a liability under the CE Act.

A summary and policy guidance on the International Linking Amendment Regulation is provided at [Attachment A](#).

A Statement of Compatibility with Human Rights has been completed for the International Linking Amendment Regulation, in accordance with the *Human Rights (Parliamentary Scrutiny) Act 2011*. The Statement's assessment is that the International Linking Amendment Regulation is compatible with human rights because it either does not engage those rights or, to the extent that it may limit human rights, those limits are reasonable, necessary and proportionate. A copy of the Statement is at [Attachment B](#).

Details of the International Linking Amendment Regulation are set out in [Attachment C](#).

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

The International Linking Amendment Regulation commences on the day after it is registered.

Consultation

On 28 August 2012, the Minister for Climate Change, Industry and Innovation, the Hon Greg Combet AM MP, and the European Union Commissioner for Climate Action, Ms Connie Hedegaard, announced that an interim one-way link between Australia's carbon pricing mechanism and the European Union Emissions Trading System would commence on 1 July 2015, with a direct link to be established no later than 1 July 2018.

The policy that is implemented in the International Linking Amendment Regulation is consistent with the joint consultation paper *Registry options to facilitate linking of emissions trading systems* and the exposure draft of the Regulation that was publicly released by the then Department of Climate Change and Energy Efficiency (DCCEE) and the European Commission in March 2013. The then DCCEE held consultation meetings with business and legal stakeholders on the Regulation and received 21 written submissions. Stakeholder submissions and feedback were taken into consideration in the preparation of the Regulation.

Authority: Section 97 of the *Australian National Registry of Emissions Units Act 2011*
Section 312 of the *Clean Energy Act 2011*
Section 307 of the *Carbon Credit (Carbon Farming Initiative) Act 2011*

Summary and Policy Guidance on the *Clean Energy Legislation Amendment (International Linking) Regulation 2013*

Emissions units issued under the Australian carbon pricing mechanism and the European Union Emissions Trading System (EU ETS) are solely represented by electronic entries in a registry. Linking registries is therefore necessary to facilitate trade between emissions trading systems. Linking provides benefits to all parties involved in emissions trading by reducing the cost of cutting greenhouse gas emissions, increasing market liquidity and supporting a global response to climate change.

There are two broad types of registry link that could be implemented: a direct registry link; or an indirect registry link. A direct registry link would provide for the registry-to-registry transfers of Australian carbon units, issued under the *Clean Energy Act 2011* (CE Act), and European allowance units, effectively making them fully fungible units. An indirect registry link would not involve the direct transfer of units between registries, but would provide for an Australian-issued international unit (AIU) to be issued to an Australian National Registry of Emissions Units (Australian Registry) account upon the transfer of a European allowance unit into an Australian Government account in the European Union Registry (Union Registry). Both types of link are provided for by the *Australian National Registry of Emissions Units Act 2011*.

The Government will seek to implement a direct registry link between Australia's carbon pricing mechanism and the EU ETS by 1 July 2018. In the interim period, from 1 July 2015 to the establishment of a direct link, the *Clean Energy Legislation Amendment (International Linking) Regulation 2013* (International Linking Amendment Regulation) will implement an indirect link, to facilitate transfers of units between the Union Registry and the Australian Registry. This indirect link will involve the holding of a European allowance unit in an Australian Government account in the Union Registry and the issue of an AIU in the Australian Registry to 'shadow' this allowance unit in the Australian system. The AIU could be transferred within the Australian Registry, surrendered for compliance under the CE Act, or converted back into a European allowance unit in the Union Registry.

To facilitate these linking arrangements, the International Linking Amendment Regulation will amend the Principal *Australian National Registry of Emissions Units Regulations 2011* to:

- set out the conditions for the issuance of AIUs in the Australian Registry;
- specify the treatment of AIUs that are cancelled or relinquished;
- establish the process for converting or 'swapping-back' AIUs for European allowance units in the Union Registry;
- establish the process for suspending the operation of the indirect registry link to conduct maintenance or to protect the security of the Australian Registry; and
- set out arrangements for the automatic exchange of AIUs for European allowance units in the transition to a full direct link with the Union Registry.

The International Linking Amendment Regulation will also amend the Principal *Carbon Credits (Carbon Farming Initiative) Regulations 2011* to clarify that an Australian carbon credit unit cannot be exported unless provided for in an operational international

arrangement.

The International Linking Amendment Regulation will further amend the Principal *Clean Energy Regulations 2011* to specify the treatment of an AIU that is surrendered for compliance with the CE Act.

Statement of Compatibility with Human Rights

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

Clean Energy Legislation Amendment (International Linking) Regulation 2013

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 Clean Energy Legislation Amendment (International Linking) Regulation 2013

Linking registries, either directly or indirectly, is necessary to enable trade between emissions trading systems. A direct registry link would provide for the registry-to-registry transfers of Australian carbon units, issued under the *Clean Energy Act 2011* (CE Act), and European allowance units, effectively making them fully fungible units. An indirect registry link would not involve the direct transfer of units from one registry to the other, but would allow for European allowance units to be exchanged for Australian-issued international units (AIUs) in an Australian National Registry of Emissions Units (Australian Registry) account and vice versa. Linking provides benefits to all parties involved in emissions trading by reducing the cost of cutting greenhouse gas emissions, increasing market liquidity and supporting a global response to climate change.

The Government will seek to implement a direct registry link between Australia's carbon pricing mechanism and the European Union Emissions Trading System EU ETS by 1 July 2018. In the interim period, from 1 July 2015 to the establishment of a direct link, the Clean Energy Legislation Amendment (International Linking) Regulation 2013 (International Linking Amendment Regulation) will implement an indirect link, to facilitate transfers of units between the Union Registry and the Australian Registry. This indirect link will involve the holding of a European allowance unit in an Australian Government account in the European Union Registry (Union Registry) and the issue of an AIU in the Australian Registry to 'shadow' this allowance unit in the Australian system. The AIU could then be transferred in the Australian Registry, surrendered for compliance under the CE Act, or converted back into a European allowance unit in the Union Registry.

To facilitate these linking arrangements, the International Linking Amendment Regulation will amend the Principal Australian National Registry of Emissions Units Regulations to:

- set out the conditions for the issuance of AIUs in the Registry;
- specify the treatment of AIUs that are cancelled or relinquished;
- establish the process for converting AIUs back into European allowance units in the Union Registry;
- establish the process for suspending the operation of the indirect link with the Union Registry to conduct maintenance or to protect the security of the Australian Registry; and
- set out arrangements for the automatic exchange of AIUs for European allowance units in the transition to a full direct link with the Union Registry.

The International Linking Amendment Regulation will amend the Principal *Carbon Credits (Carbon Farming Initiative) Regulations 2011* to clarify that an Australian carbon credit unit cannot be exported unless provided for in an operational international arrangement.

The International Linking Amendment Regulation will amend the Principal *Clean Energy Regulations 2011* to specify the treatment of an AIU surrendered to meet a liability under the CE Act.

Human rights implications

The amendments engage the right to privacy under Article 17 of the International Convention of Civil and Political Rights.

Prescribed international units are personal property and, subject to the requirements of the *Australian National Registry of Emissions Units Act 2011*, are transmissible by assignment (that is, as a result of some form of agreement to transfer the units to another person), by operation of law (including as part of a deceased estate) and by other forms of transfer permitted by law.

International Linking Amendment Regulation 58 (at Item 7) specifies the evidence that must be submitted to the Clean Energy Regulator so that a prescribed international unit may be transmitted by operation of law from a person (the transferor) to another person (the transferee). In addition to proving his or her entitlement to the relevant units, a transferee must provide the Regulator with personal information including their name, address (if relevant) and Australian Registry account numbers, and the name, address (if relevant) and Australian Registry account number of the transferor. The collection of information has been limited to what is necessary to identify the transferee and to satisfy the Regulator of the transferee's lawful title to the relevant prescribed international units. This treatment is consistent with the treatment of other eligible emissions units in the Australian system. The treatment is neither arbitrary nor unlawful.

Although in some circumstances some of the contact details may already be publicly available, the contact details for these persons will not be publicly disclosed by the Regulator. The information will be regulated and treated in accordance with the secrecy provisions set out in the *Clean Energy Regulator Act 2011* and the *Privacy Act 1988*.

Conclusion

The International Linking Amendment Regulation is compatible with human rights because it does not engage those rights or, to the extent that it may limit human rights, those limits are reasonable, necessary and proportionate.

Greg Combet

Minister for Climate Change, Industry and Innovation

Clean Energy Legislation Amendment (International Linking) Regulation 2013

Section 1 – Name of Regulation

Section 1 provides that the name of the Regulation is the *Clean Energy Legislation Amendment (International Linking) Regulation 2013*.

Section 2 – Commencement

Section 2 provides that Schedule 1 of the Regulation commences on the day after it is registered.

Section 3 – Authority

Section 3 provides that the Regulation is made under the *Australian National Registry of Emissions Units Act 2011* (ANREU Act), the *Carbon Credits (Carbon Farming Initiative) Act 2011* (CFI Act) and the *Clean Energy Act 2011* (CE Act).

Section 4 – Schedule(s)

Section 4 provides that Schedule 1 amends the *Australian National Registry of Emissions Units Regulations 2011*, the *Carbon Credits (Carbon Farming Initiative) Regulations 2011*, and the *Clean Energy Regulations 2011*.

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

Item 1 – Regulation 3, after the definition of *entity*

Item 1 inserts the definition of ‘European Union Transaction Log’ into regulation 3, which contains definitions.

Item 2 – Regulation 3, after the definition of *foreign person*

Item 2 inserts the term ‘foreign registry’ into regulation 3. For the purposes of the Regulation, the meaning of ‘foreign registry’ is provided by regulation 4A which is inserted by Item 4 (below).

Item 3 – Regulation 3, after *replacement day*

Item 3 inserts the definition of ‘Union allowance deletion account’, which is consistent with the use of this term in Article 63 of Commission Regulation (EU) No 1193/2011, the text of which can be found at: <http://eur-lex.europa.eu>. Item 3 also inserts the definition of ‘Union Registry’ which is consistent with the use of the term in Article 19 of Directive 2003/87/EC of the European Parliament and of the Council. The text of Directive 2003/87/EC may be found at: <http://eur-lex.europa.eu>.

Item 4 – After regulation 4

Item 4 inserts regulation 4A, specifying that the Union Registry is a foreign registry for the

purposes of the definition of ‘foreign registry’, in section 4 of the ANREU Act. Section 4 of the Act further specifies that a ‘foreign registry’ means a registry that is located in a foreign country.

Item 5 – At the end of regulation 24

Item 5 provides that the Clean Energy Regulator (Regulator) may designate a Commonwealth account in the Australian Registry with the name ‘an Australian-issued international units – substitute units – relinquished units account’ and ‘an Australian-issued international units – surrendered units account’. These accounts are established for unit accounting purposes and will help the Clean Energy Regulator to track AIIUs that have been relinquished or surrendered against a liability under the CE Act.

Item 6 – At the end of Part 2

Item 6 inserts a new regulation 35A, which allows the Regulator to temporarily suspend certain activities that give effect to the link between the Australian Registry and the Union Registry in certain conditions. These activities include the issue of Australian-issued international units (AIIUs) for European allowance units and the processing of instructions for incoming and outgoing international transfers of prescribed international units. The Regulator may only suspend one or more of the specified activities if the Regulator is satisfied that it is necessary so that maintenance can be conducted or to protect the security of the Australian Registry.

The effect of the regulation is that the Regulator may defer taking action in relation to an activity until a suspension made by the Regulator under regulation 35A(2) ends. A suspension must end no more than five business days after it has commenced.

As soon as practicable after suspending the link to the Union Registry, the Regulator must publish a notice of the suspension on its website and inform the European Union Transaction Log.

A note at the end of regulation 35A highlights that sections 28 to 28D of the ANREU Act may also be applied by the Regulator to the Australian Registry or Registry accounts.

Item 7 – After Part 3

Item 7 inserts a new Part 4 to provide provisions for prescribed international units under Part 4, Division 3 of the ANREU Act, as well as provisions for AIIUs issued for European allowance units held in the Union Registry account under Part 4, Division 2 of the ANREU Act.

Regulation 50 specifies that the new Division 4.1 of the ANREU Regulations applies to section 48D of the ANREU Act, which provides for the issue of AIIUs, and to section 48E of the ANREU Act, which provides a broad power allowing further regulations concerning AIIUs to be made.

Regulation 51(1) specifies that the Regulator may only issue an AIIU for a European allowance unit if:

- a Commonwealth foreign registry account is operational in the Union Registry;
- a person (the transferor) has requested that a European allowance unit be transferred

- from their Union Registry account to the Commonwealth foreign registry account;
- the Regulator and the European Union Transaction Log have validated the transfer; and
- the transferor has specified an Australian Registry account in which a corresponding AIIU is to be issued.

The Regulator must issue an AIIU as soon as practicable after the transfer is validated. To validate a transfer, the Regulator must confirm that the Australian Registry account in which an AIIU is to be issued is open, no conditions restrict or limit transfers of units to the account and that the account or the operation of the Australian Registry as a whole is not suspended under the ANREU Act. The European Union Transaction Log validates a transfer by confirming that the European allowance unit will be transferred from the transferor's account in the Union Registry to the Commonwealth foreign registry account.

An AIIU may not be issued if an international arrangement allowing direct transfers of European allowances into the Australian Registry is in place.

Regulation 52 provides that the Regulator must notify the European Union Transaction Log as soon as practicable after an AIIU is issued.

Regulation 53 sets out actions that must be undertaken by the Regulator following the cancellation of an AIIU when an Australian Registry account is unilaterally closed by the Regulator. As soon as practicable after an AIIU is cancelled, the Regulator must tell the EUTL and must arrange for a European allowance unit to be transferred to the Union Registry deletion account within 12 months. These actions are in addition to those outlined in clause 28(6) of the Principal ANREU Regulation and subject to any ministerial directions about the operation of the Commonwealth Union Registry account given under subsection 86A(4) of the ANREU Act.

Regulation 54 provides that a registered holder of a prescribed international unit is the legal owner of the unit if it was acquired for good value.

An AIIU issued for a European allowance unit may not be transferred to a foreign registry. Regulation 55 provides that an outgoing international transfer of an AIIU requested under section 52 of the ANREU Act must involve the cancellation of an AIIU and a European allowance unit being released from the Commonwealth Union Registry account and transferred into a specified Union Registry account. Such transactions must be validated by the Regulator by confirming that:

- the Australian Registry account from which the AIIU is to be cancelled is open;
- no conditions restrict or limit transfers of units from the account; and
- the account or the Australian Registry as a whole is not suspended under the ANREU Act.

The validation process also involves the European Union Transaction Log confirming that the European allowance unit will be transferred from the Commonwealth foreign registry account to the nominated foreign account in the Union Registry. If an outgoing transfer of an AIIU is successfully validated, the Regulator must arrange for the transfer of a European allowance unit from the Commonwealth Union Registry account and cancel the AIIU in the Australian Registry. If the transfer cannot be validated, the Regulator must tell the transferor that the transfer is declined.

Regulation 56 requires that an international arrangement (between an Australian and a foreign government body or an international organisation) concerning prescribed international units be in operation before the Regulator may give effect to an incoming international transfer of a prescribed international unit. In the case of a European allowance unit, the international arrangement would relate to the establishment of a direct link between the Australian Registry and the Union Registry.

Regulation 57 prescribes additional purposes for which a prescribed international unit is personal property, consistent with the treatment of other units held in the Australian Registry.

Regulation 58 specifies the evidence that must be provided to the Regulator by a person to substantiate a transmission of prescribed international units that occurs as a result of a will or by operation of law such as a transfer from a deceased estate.

Regulation 59 provides that Division 4.5 modifies Division 3 of the ANREU Act and applies it to AIIUs issued for European allowance units held in the Commonwealth Union Registry account.

Under subsections 50(1)(c) and (d) of the ANREU Act, the transfer of a prescribed international unit into a foreign account would consist of a direct transfer of the unit into a foreign registry. Regulation 60 modifies the application of these paragraphs to AIIUs issued for European allowance units. It provides for the process of swapping back an AIIU issued for a European allowance unit, which consists of cancelling the AIIU in the Australian Registry and transferring a European allowance unit out of the Commonwealth foreign registry account and into a specified foreign account.

Item 8 – Part 5 (after the heading)

Item 8 inserts a new regulation 65 which specifies AIIUs as a class of prescribed international unit for the purposes of section 59A of the ANREU Act. As such, the Regulator must publish on its website the total number of AIIUs that are in the Australian Registry as soon as practicable after the end of each quarter.

Item 9 – Regulation 50

Regulation 50 in the Principal ANREU Regulation is renumbered as regulation 66 so that it will follow the new regulations inserted by the Regulation.

Item 10 – After Part 5

Item 10 inserts new Part 6, new Part 6A and new Part 6B to establish the processes and requirements for the Regulator concerning the cancellation and relinquishment of AIIUs.

Regulation 68 provides that, when the Regulator receives a notice from a person seeking to voluntarily cancel an AIIU, the Regulator must cancel the unit, inform the European Union Transaction Log of the cancellation in a timely manner and arrange for a European allowance unit in the Commonwealth Union Registry account to be deleted.

Regulation 70 requires the Regulator to cancel AIIUs held in Australian Registry accounts and replace them with the same number of European allowance units upon commencement of a direct link between the Australian Registry and the Union Registry. This ‘automatic exchange’ process must be completed by the Regulator within three business days of the

cancellation of an AIIU and cannot be undertaken unless there is an international arrangement in place that allows the direct transfer of European allowance units into the Australian Registry.

In cases of fraud, a person may be required to relinquish an appropriate number of AIIUs to the Regulator who will cancel the units. Regulation 72 directs the Regulator, within 12 months of an AIIU being relinquished, to inform the European Union Transaction Log of the relinquishment and arrange for the deletion of a corresponding European allowance unit held in the Commonwealth Union Registry account.

An appropriate number of carbon units or Australian carbon credit units (ACCUs) may be relinquished instead of AIIUs in accordance with section 66E of the Act and then cancelled by the Regulator. Regulation 73 provides that a substitute unit relinquished for an AIIU must be transferred to the Australian-issued international units—substitute units—relinquished units account.

Schedule 1 – Amendments to the *Carbon Credits (Carbon Farming Initiative) Regulations 2011*

Item 11 – After regulation 11.1

Regulation 11.2 provides that an international arrangement that permits the direct transfer of an ACCU to a foreign registry account must be operational before the Regulator may give effect to such transfers. If an international agreement is not in place, the Regulator must notify the person who gave the instruction that the instruction is declined.

Schedule 1 – Amendments to the *Clean Energy Regulations 2011*

Item 12 – Before regulation 6.1

Item 1 inserts a new regulation 6.1A before regulation 6.1.

Regulation 6.1A sets out the actions that must be undertaken by the Regulator when an AIIU is surrendered for compliance purposes under the CE Act. The Regulator must cancel the AIIU in the Australian Registry, notify the European Union Transaction Log that the unit has been surrendered, and arrange for a European allowance unit to be deleted from the Commonwealth Union Registry account within six months of the AIIU being surrendered.

Subclause 6.1A(2) provides that the definitions for terms in regulation 6.1A are consistent with the Principal ANREU Regulations and inserts the definition of ‘day for surrender of the unit’ which means the last day on which an AIIU may be surrendered to avoid liability for unit shortfall charge in relevant financial year.