

EXPLANATORY STATEMENT

Select Legislative Instrument No. 129, 2014

Issued by authority of the Minister for the Environment

Australian National Registry of Emissions Units Act 2011

Australian National Registry of Emissions Units Amendment Regulation 2014 (No. 1)

Section 97 of the *Australian National Registry of Emissions Units Act 2011* (the “ANREU Act”) provides that the Governor-General may make regulations prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act. The *Australian National Registry of Emissions Units Regulations 2011* (the “ANREU Regulations”) have previously been made under this section.

The *Australian National Registry of Emissions Units Amendment Regulation 2014 (No. 1)* (the “Regulation”) makes minor amendments to the ANREU Regulations, primarily to reflect the changes made to the ANREU Act by the *Clean Energy Legislation (Carbon Tax Repeal) Act 2014* (the “Carbon Tax Repeal Act”). The Regulation also provides amendments to the ANREU Regulations that will become necessary if the *Carbon Farming Initiative Amendment Bill 2014* (the “ERF Bill”) is enacted.

Repeal of the Carbon Tax

The Australian National Registry of Emissions Units (the “ANREU”) is a secure electronic database that records the ownership of carbon emissions units (such as domestically-issued Australian carbon credit units (“ACCUs”), or Certified Emission Reductions issued under the Kyoto Protocol) in Australia. It is established by the ANREU Act and is supported by the ANREU Regulations.

The ANREU played an important role in underpinning the carbon tax, since it established ownership of carbon units issued under the *Clean Energy Act 2011* (the “CE Act”). With the repeal of the CE Act and its associated instruments, all carbon tax-related elements must be removed from the ANREU. The Carbon Tax Repeal Act has already achieved this in the context of the ANREU Act. The Regulation completes the process by removing all carbon tax-related elements from the ANREU Regulations.

Specifically, the Regulation makes the following changes to the ANREU Regulations:

- removes carbon tax-related provisions dealing with carbon units and entities liable under the CE Act;
- removes the architecture allowing for linkages between the ANREU and foreign registries; and
- as a transitional measure, preserves the ANREU Regulations in relation to carbon units issued on or before 1 February 2015 (which is the last day on which liable entities may purchase or receive carbon units from the Clean

Energy Regulator for the purposes of acquitting their 2013-14 carbon liability).

Introduction of the Emissions Reduction Fund

The ANREU plays an important role in supporting the Carbon Farming Initiative (the “CFI”), an offsets scheme established through the *Carbon Credits (Carbon Farming Initiative) Act 2011* (the “CFI Act”). Under the CFI, landholders can earn ACCUs for carbon abatement generated on their land. ACCUs are stored and traded in the ANREU.

The ERF Bill, if enacted, will introduce a new abatement scheme to be known as the “Emissions Reduction Fund” (the “ERF”). The ERF will be implemented through amendments to the CFI Act. These amendments will have a flow-on effect on certain provisions of the ANREU Regulations that reference the CFI Act; meaning that, if the ERF Bill is enacted, it will be necessary to make the following changes to the ANREU Regulations:

- alter the concept of the “fit and proper person” so that it aligns with the new test set out in the CFI Act; and
- remove a streamlining opportunity for people simultaneously applying to open an ANREU account and become an offsets entity (to reflect the abolition of the category of offsets entities).

General

An exposure draft of the Regulation was released for public consultation in June 2014. There were no submissions made in relation to this draft.

Details of the Regulation are outlined in Attachment A.

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

A glossary of terms used in this Explanatory Statement is provided in Attachment C.

There are no statutory pre-conditions that need to be satisfied before the power to make the Regulation may be exercised.

ATTACHMENT A

Details of the *Australian National Registry of Emissions Units Amendment Regulation 2014 (No. 1)* (the “Regulation”)

Section 1 – Name of regulation

Section 1 provides that the title of the Regulation is the *Australian National Registry of Emissions Units Amendment Regulation 2014 (No. 1)*.

Section 2 – Commencement

Section 2 provides that the Regulation commences the day after it is registered – with the exception of Schedule 2, which commences on the later of (a) the day after the Regulation is registered, and (b) the day Schedule 1 to the *Carbon Farming Initiative Amendment Act 2014* commences. Schedule 2 cannot commence until condition (b) above is satisfied.

Section 3 – Authority

Section 3 provides that the Regulation is made under the *Australian National Registry of Emissions Units Act 2011* (the “ANREU Act”).

Section 4 – Schedules

Section 4 provides that each instrument that is specified in a Schedule to the Regulation is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to the Regulation has effect according to its terms.

Amendments

Schedule 1 – Amendments relating to the repeal of the carbon tax

Items 1 and 3 remove the definitions of “Clean Energy Act”, “European Union Transaction Log”, “foreign registry”, “Union allowance deletion account” and “Union Registry” from regulation 3 of the *Australian National Registry of Emissions Units Regulations 2011* (the “ANREU Regulations”). The *Clean Energy Legislation (Carbon Tax Repeal) Act 2014* (the “Carbon Tax Repeal Act”) has repealed the *Clean Energy Act 2011* (the “CE Act”) and has removed the architecture allowing for linkages between the Australian National Registry of Emissions Units (the “ANREU”) and foreign registries.

Item 2 removes the terms “carbon unit” and “prescribed international unit” from the list provided in the Note at the end of the definition of “replacement day” in regulation 3 of the ANREU Regulations. The Carbon Tax Repeal Act has removed these definitions from the ANREU Act.

Item 4 repeals regulation 4A of the ANREU Regulations, which specifies the Union Registry¹ for the purposes of the definition of “foreign registry” in section 4 of the

¹ That is, the Registry of the European Union Emissions Trading System.

ANREU Act. Since the Carbon Tax Repeal Act has removed the architecture allowing for linkages between the ANREU and foreign registries, there is no longer any need to specify a foreign registry for the purposes of section 4.

Items 5-6 remove the requirement for the Clean Energy Regulator (the “Regulator”) to consider the fit and proper person criteria when opening an ANREU account for a person who, under the CE Act, is a liable entity or a person eligible to be issued free carbon units. Since the Carbon Tax Repeal Act has repealed the CE Act, the Regulator will no longer be opening ANREU accounts for any such entities.

Items 7-8 remove the ability of the Regulator, under section 12 of the ANREU Act, to designate a Commonwealth Registry account as an account with one of the names specified in sub-regulation 24(p)-(u) of the ANREU Regulations. Since the Carbon Tax Repeal Act has abolished carbon units² and Australian-issued international units, there is no longer any need for Commonwealth Registry accounts to exist for the purpose of handling such units.

Items 9-11 lift the restriction on the Regulator from closing an ANREU account at the request of the account-holder where there are carbon units or prescribed international units in the account. Since the Carbon Tax Repeal Act has abolished carbon units and prescribed international units, the Regulator will no longer need to consider such units when closing ANREU accounts.

Items 12-14 remove provisions that cancel any carbon units or prescribed international units held in ANREU accounts that are unilaterally closed by the Regulator. The Carbon Tax Repeal Act has abolished such units.

Items 15-17 remove the requirement for ANREU account-holders to notify the Regulator as soon as practicable after becoming aware that a carbon unit or a prescribed international unit has been incorrectly transferred to or from their account. The Carbon Tax Repeal Act has abolished such units.

Items 18-20 remove the prohibition on ANREU account-holders initiating ANREU transactions in relation to carbon units or prescribed international units that they know (or ought reasonably to know) have been incorrectly transferred to their account. The Carbon Tax Repeal Act has abolished such units.

Item 21 repeals regulation 35A of the ANREU Regulations, thereby removing the ability of the Regulator to temporarily suspend the operation of the ANREU in relation to the issue of Australian-issued international units or the transfer of prescribed international units to or from foreign accounts. Since the Carbon Tax Repeal Act has removed the architecture allowing for linkages between the ANREU and foreign registries, the circumstances enumerated in regulation 35A can no longer arise.

Item 22 repeals Part 4 of the ANREU Regulations, which creates a framework for the issuance, ownership and transfer of prescribed international units. The Carbon Tax Repeal Act has abolished such units.

² Noting that section 323 of the Carbon Tax Repeal Act preserves carbon units until 9 February 2015. This is a transitional measure designed to assist liable entities to acquit their 2013-14 carbon tax liability.

Item 23 repeals regulation 65 of the ANREU Regulations, which specifies Australian-issued international units for the purposes of section 59A of the ANREU Act. The Carbon Tax Repeal Act has repealed section 59A.

Item 24 repeals Parts 6-6B of the ANREU Regulations, which deal with voluntary cancellation and relinquishment of Australian-issued international units and replacement of Australian-issued international units with European allowance units. The Carbon Tax Repeal Act has abolished Australian-issued international units and has removed the architecture allowing for linkages between the ANREU and foreign registries. In place of Parts 6-6B, item 24 inserts a new regulation 70 into the ANREU Regulations. New regulation 70 preserves the ANREU Regulations, as they existed immediately before the commencement of Schedule 1 to the Regulation, for the purposes of the ANREU Act as it continues to apply because of item 332 of Schedule 1 to the Carbon Tax Repeal Act. Item 332 of Schedule 1 preserves the ANREU Act, as it existed immediately before the commencement of Schedule 1 to the Carbon Tax Repeal Act, in relation to carbon units issued before 9 February 2015. The purpose of new regulation 70 is to preserve the ANREU Regulations in relation to carbon units issued on or before 1 February 2015, which is the last day on which liable entities may purchase or receive carbon units from the Regulator for the purposes of acquitting their 2013-14 carbon liability.

Schedule 2 – Other amendments

Items 1-2 remove the definition of “fit and proper person criteria” from regulation 3 of the ANREU Regulations and replace it with a new definition of “fit and proper person test”, as defined in the *Carbon Credits (Carbon Farming Initiative) Act 2011* (the “CFI Act”). As explained above, the “Emissions Reduction Fund” (the “ERF”), if enacted, will be implemented through amendments to the CFI Act. Amongst other things, these amendments, as outlined in the *Carbon Farming Initiative Amendment Bill 2014* (the “ERF Bill”), will replace the current “fit and proper person” criteria (as set out in sub-sections 64(3)(a) and 65(1)(a) of the CFI Act) with a new “fit and proper person test” (as set out in Part 4 of the ERF Bill). This will in turn have a flow-on effect on certain provisions of the ANREU Regulations that reference the CFI Act. One such effect will be the need to update the relevant definition in regulation 3 of the ANREU Regulations.

Items 3 and 7-11 update references to the “fit and proper person criteria” to refer to the “fit and proper person test”. The ERF Bill, if enacted, will replace the current “fit and proper person” criteria with a new “fit and proper person test”.

Items 4-6 remove the ability of an ANREU account applicant to avoid having to give to the Regulator a document they have already submitted for the purposes of becoming an offsets entity. The ERF Bill, if enacted, will abolish the category of offsets entities.

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 2014 (No. 1)

This Legislative Instrument 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 Legislative Instrument

The *Australian National Registry of Emissions Units Amendment Regulation 2014 (No. 1)* amends the *Australian National Registry of Emissions Units Regulations 2011* in order to:

- implement the repeal of the carbon tax; and
- facilitate the proposed introduction of the Emissions Reduction Fund.

Human rights implications

This Legislative Instrument does not engage any of the applicable human rights or freedoms.

Conclusion

This Legislative Instrument is compatible with human rights as it does not raise any human rights issues.

The Hon Greg Hunt MP
Minister for the Environment

ATTACHMENT C

Glossary of Terms Used

Term	Definition
ACCU	Australian carbon credit unit
ANREU	Australian National Registry of Emissions Units
ANREU Act	<i>Australian National Registry of Emissions Units Act 2011</i>
ANREU Regulations	<i>Australian National Registry of Emissions Units Regulations 2011</i>
Carbon Tax Repeal Act	<i>Clean Energy Legislation (Carbon Tax Repeal) Act 2014</i>
CE Act	<i>Clean Energy Act 2011</i>
CFI	Carbon Farming Initiative
CFI Act	<i>Carbon Credits (Carbon Farming Initiative) Act 2011</i>
ERF	Emissions Reduction Fund
ERF Bill	<i>Carbon Farming Initiative Amendment Bill 2014</i>
Regulation	<i>Australian National Registry of Emissions Units Amendment Regulation 2014 (No. 1)</i>
Regulator	Clean Energy Regulator