

EXPLANATORY STATEMENT

Select Legislative Instrument No. 168, 2015

Issued by authority of the Minister for the Environment

Australian National Registry of Emissions Units Act 2011

Australian National Registry of Emissions Units Amendment (Carry-Over) Regulation 2015

Section 97 of the *Australian National Registry of Emissions Units Act 2011* (ANREU Act) provides 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 this Act.

The ANREU Act establishes the Australian National Registry of Emissions Units (Australian Registry). It also establishes the procedures and requirements relating to Kyoto units in the Australian Registry, which ensure accurate accounting of the issuance, holding, transfer, cancellation, retirement and carry-over of Kyoto units. The Australian Registry meets Australia's obligations in relation to Kyoto units under the Kyoto Protocol to the United Nations Framework Convention on Climate Change. The Clean Energy Regulator administers the Australian Registry.

The *Australian National Registry of Emissions Units Amendment (Carry-Over) Regulation 2015* (Carry-Over Amendment Regulation) makes amendments to the Australian National Registry of Emissions Units Regulations 2011 (ANREU Regulations) to implement the Kyoto Protocol 'carry-over' rules by:

- identifying the types of Kyoto units for which carry-over is permitted, subject to the limits set by the Kyoto Protocol;
- establishing procedures for the carry-over of such Kyoto units;
- identifying the types of Kyoto units for which carry-over is not permitted; and
- requiring the Regulator to transfer from the relevant Registry account to the mandatory cancellation account Kyoto units that have not been carried over in accordance with the established procedures and any Kyoto units for which carry-over is not permitted.

The Kyoto carry-over rules are designed to help Parties manage the cost of reducing emissions over time. In line with this intent, the Carry-Over Amendment Regulation does not allow private account holders to carry-over Kyoto units issued in relation to the first commitment period of the Kyoto Protocol into the second commitment period. Kyoto units issued in relation to the second commitment period of the Kyoto Protocol will not be affected by these changes.

A summary and policy guidance on the Carry-Over Amendment Regulation is provided at Attachment A.

Details of the Carry-Over Amendment Regulation are set out in Attachment B.

A Statement of Compatibility with Human Rights has been completed for the Carry-over Amendment Regulation, in accordance with the *Human Rights (Parliamentary Scrutiny) Act 2011*. The Statement's assessment is that the Carry-Over Amendment Regulation is compatible with human rights because it does not engage or limit human rights. A copy of the Statement is at Attachment C.

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

The Carry-Over Amendment Regulation commences on the day after it is registered. There are no statutory pre-conditions that need to be satisfied before the power to make the Carry-Over Amendment Regulation may be exercised.

Under sub-section 33(3) of the *Acts Interpretation Act 1901*, where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character (including rules, regulations or by-laws), the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument.

Documents incorporated by reference

The Carry-Over Amendment Regulation and this Explanatory Statement refer to the 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. 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.

The Kyoto Protocol and other documents that form the Kyoto rules are available from the UNFCCC at <http://unfccc.int/2860.php>.

Consultation

An exposure draft of the Carry-Over Amendment Regulation was released on the Department of the Environment's website for public consultation on 20 July 2015.

The policy that is implemented through the Carry-Over Amendment Regulation is consistent with the assumption about carry-over set out in *Australia's emissions projections 2014–15*. This publication was released by the Department of the Environment in March 2015 and is available on the Department's website: www.environment.gov.au/climate-change/emissions-projections.

Regulatory impacts

A preliminary assessment of the regulatory impacts of the Carry-Over Amendment Regulation was completed. Based on that assessment the Office of Best Practice Regulation advised that a Regulatory Impact Statement was not needed (ID 19219).

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

Summary and policy guidance on the *Australian National Registry of Emissions Units Amendment (Carry-Over) Regulation 2015*

Under the Kyoto Protocol, first commitment period reporting and review processes will continue until the end of the ‘additional period for fulfilling commitments’, commonly referred to as the ‘true-up period’. The true-up period is a specific period of 100 days, commencing after the finalisation of national inventories for the first commitment period (2008-2012). During the true-up period, a Party may reconcile any remaining differences between its total emissions during the commitment period and the number of units retired to meet its target.

In accordance with decision 3/CMP.10 of the Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol, the true-up period commenced on 10 August 2015 and is expected to end on 18 November 2015.

If, at the end of the true-up period and after it has retired sufficient Kyoto units to cover its first commitment period target, a Party has surplus first commitment period assigned amount units (AAUs) or certain other Kyoto units in its registry, it can carry-over these units for use in the second commitment period (2013-2020). This carry-over is subject to the limits set out in **Table 1**, below.

Australia overachieved on its first commitment period target to limit emissions to 108 per cent of 1990 levels. The Carry-Over Amendment Regulation enables the Commonwealth to carry this overachievement, in the form of surplus AAUs, forward into the second commitment period. This enables the Commonwealth to count its surplus AAUs towards Australia’s 2020 emissions reduction target, if this target is not otherwise met.

The Kyoto carry-over rules are designed to help Parties manage the cost of reducing emissions over time. In line with this intent, the Regulation does not allow private account holders to carry-over Kyoto units issued in relation to the first commitment period of the Kyoto Protocol into the second commitment period. As such, Kyoto units issued in relation to the first commitment period of the Kyoto Protocol that are held in private accounts at the end of the true-up period will be cancelled by the Regulator in accordance with the Kyoto rules.

Kyoto units issued in relation to the second commitment period of the Kyoto Protocol are not affected by these changes.

Table 1: Kyoto units – types and carry-over restrictions under Kyoto rules

Unit	Description of unit	Carry-over limit
Assigned Amount Units (AAUs)	AAUs are issued by Annex 1 Parties to represent their carbon budget. A Party can carry-over surplus AAUs for use against its second commitment period (2020) target.	Unlimited quantity of AAU carry-over but a Party can only count surplus AAUs towards its 2020 target if it emits more than its target
Certified Emissions Reductions (CERs)	Generated by emissions reductions that result from Clean Development Mechanism activities (i.e. emission reduction or removal projects in developing countries)	Carry-over limited to a number of CERs equal to 2.5 per cent of a Party's initial assigned amount
	'Temporary' CERs (tCERs) and 'long-term' CERs (lCERs) are issued for afforestation and reforestation project activities under the Clean Development Mechanism	Nil – cancelled at true-up
Emission Reduction Units (ERUs)	Generated by emissions reductions or removals from Joint Implementation project activities by converting an equivalent quantity of existing AAUs or RMUs	Carry-over of ERUs converted from AAUs limited to a number of units equal to 2.5 per cent of a Party's initial assigned amount
		ERUs converted from RMUs: Nil – all must be cancelled at true-up
Removal Units (RMUs)	Generated by land sector activities that remove greenhouse gases from the atmosphere, e.g. Reforestation	Nil – all remaining RMUs must be cancelled at true-up

Australian National Registry of Emissions Units Amendment (Carry-Over) Regulation 2015

Section 1 – Name of regulation

Section 1 provides that the title of the Regulation is the *Australian National Registry of Emissions Units Amendment (Carry-Over) Regulation 2015* (the Carry-Over Amendment Regulation).

Section 2 – Commencement

Section 2 provides that the Carry-Over Amendment Regulation commences the day after it is registered.

Section 3 – Authority

Section 3 provides that the Carry-Over Amendment Regulation is made under the *Australian National Registry of Emissions Units Act 2011* (ANREU Act).

Section 4 – Schedules

Section 4 explains that the Schedule specified in the Regulation is amended (or repealed) as set out in the applicable items in the Schedule. Any other item in a Schedule to the Carry-Over Amendment Regulation has effect according to its terms.

There is one Schedule in the Carry-Over Amendment Regulation. A description of its terms follows.

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

Item 1

Item 1 inserts a new Division at the end of Part 3 of the ANREU Regulations. This new Division establishes rules and procedures to implement the Kyoto Protocol carry-over rules. In particular, the new Division:

- identifies the types of Kyoto units which may and may not be carried over from the first commitment period to the second commitment period; and
- specifies the procedures for dealing with any such Kyoto units.

The Division consists of five new regulations, which are described below.

Regulation 50 provides that the new Division applies only to Kyoto units that are issued for use in the first commitment period of the Kyoto Protocol (Item 2, paragraph 50). The first commitment period began on 1 January 2008 and ended on 31 December 2012. Kyoto units issued in relation to the second commitment period (2013-2020) will not be affected by the Carry-Over Amendment Regulation.

In accordance with paragraph 24 of Decision 1/CMP.8 to the Kyoto Protocol, regulation 51 provides that assigned amount units (AAUs), certified emissions reductions (CERs) and emissions reduction units (ERUs) other than those converted from removal units (RMUs) may be carried over, subject to restrictions inscribed in the Kyoto rules (Item 2, paragraph 51(a)). In line with the intent of the Kyoto Protocol carry-over rules, regulation 51 ensures that only units held in the Commonwealth Holding Account may be carried over (Item 2, paragraph 51(b)).

Regulation 52 establishes the procedures for the carry-over of the Kyoto units for which carry-over is permitted under regulation 51 (Item 2, paragraph 52). In order for such Kyoto units to be carried over, the Minister must give an instruction to the Regulator that sets out a specified number of those units or specified units that will be carried over (Item 2, paragraphs 52(2)(a) and (b)). All carry-over instructions by the Minister to the Regulator must be consistent with the Kyoto rules (Item 2, paragraph 52(3)). The Regulator must carry-over Kyoto units in accordance with the Kyoto rules and the Minister's instruction (Item 2, paragraph 52(4)).

The Minister may instead instruct the Regulator not to carry-over certain Kyoto units, even if the Kyoto units are of a kind that may be carried over under the Kyoto rules (Item 2, paragraph 52(2)(c)). For example, the Minister may instruct the Regulator to carry-over all of Australia's surplus AAUs and no CERs and ERUs. If the Minister instructs the Regulator not to carry-over Kyoto units, the Regulator must transfer those units to the relevant mandatory cancellation account (Item 2, paragraphs 53(1)(a) and 53(2)).

Subregulation 53(1)(b) provides that the Minister will issue a final notification to the Regulator that confirms that all Kyoto units that may be carried over to the second commitment period have been carried over. This will ensure that a carry-over transaction is not initiated precipitately. At this point, the Regulator must transfer any remaining Kyoto units to the relevant mandatory cancellation account (Item 2, paragraphs 53(1)(b) and 53(2)).

Carry-over will not be permitted for Kyoto units held in accounts other than the Commonwealth holding account, or for temporary CERs, long-term CERs, RMUs, or ERUs converted from RMUs (Item 2, paragraphs 54(1)(a), 54(1)(b), 54(1)(c), 54(1)(d) and 54(1)(e)). As soon as practicable after the end of the true-up period, the Regulator must transfer any such Kyoto units to the relevant mandatory cancellation account (Item 2, paragraph 54(2)).

Units held in other Commonwealth accounts such as the retirement account are exempt from this requirement (Item 2, paragraph 54(2)(a)). Such accounts may have been designated under ANREU Regulation 24 or 25.

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 (Carry-Over) Regulation 2015

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 Act 2011* establishes the Australian National Registry of Emissions Units (Australian Registry) and the procedures and requirements relating to Kyoto units held in the Australian Registry.

The *Australian National Registry of Emissions Units Amendment (Carry-Over) Regulation 2015* makes amendments to the *Australian National Registry of Emissions Units Regulations 2011* to implement the Kyoto Protocol ‘carry-over’ rules by:

- identifying the types of Kyoto units which may and may not be carried over from the first commitment period of the Kyoto Protocol to the second commitment period;
- specifying the procedures for dealing with any such Kyoto units; and
- requiring the Regulator to cancel Kyoto units that have not been carried over in accordance with the carry-over procedures.

Under the Kyoto Protocol, first commitment period reporting and review processes will continue until the end of the ‘additional period for fulfilling commitments’, commonly referred to as the ‘true-up period’. The true-up period is a specific period of 100 days, commencing after the finalisation of national inventories for the first commitment period (2008-2012). During the true-up period, a Party may reconcile any remaining differences between its total emissions during the commitment period and the number of units retired to meet its target.

In accordance with decision 3/CMP.10 of the Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol, the true-up period commenced on 10 August 2015 and is expected to end on 18 November 2015.

If, at the end of the true-up period and after it has retired sufficient Kyoto units to cover its first commitment period target, a Party has surplus first commitment period assigned amount units (AAUs) or certain other Kyoto units in its registry, it can carry-over these units for use in the second commitment period (2013-2020).

Australia overachieved on its first commitment period target to limit emissions to 108 per cent of 1990 levels. The Regulation enables the Commonwealth to carry this overachievement

forward and count it towards Australia's 2020 emissions reduction target, if this target is not otherwise met.

The carry-over rules are designed to help Parties manage the cost of reducing emissions over time. In line with this intent, the Regulation does not allow private account holders to carry-over Kyoto units to the second commitment period. Kyoto units issued in relation to the first commitment period of the Kyoto Protocol that are held in private accounts at the end of the true-up period will be cancelled by the Regulator in accordance with the Kyoto rules.

Kyoto units issued in relation to the second commitment period of the Kyoto Protocol will not be affected by these changes.

Human rights implications

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

Conclusion

This Legislative Instrument is compatible with human rights because it does not engage or limit human rights.

The Hon Greg Hunt MP

Minister for the Environment