

EXPLANATORY STATEMENT

Issued by authority of the Minister for Climate Change and Energy

Energy Legislation Amendment (Information Requirements) Regulations 2023

Legislative Authority

The *Australian National Registry of Emissions Units Act 2011* (ANREU Act) provides for the continuation of the Australian National Registry of Emissions Units and allows the Clean Energy Regulator (Regulator) to open Registry accounts in the name of a person. Paragraph 10(6)(c) of the ANREU Act allows for regulations to be made making provision for or in relation to the information that must accompany a request to open a registry account. Subsection 11(1) of the ANREU Act allows for regulations to be made that prescribe identification procedures that the Regulator must carry out before opening a Registry account in the name of a person.

The *National Greenhouse and Energy Reporting Act 2007* (NGER Act) provides a national reporting framework for the reporting and dissemination of information related to greenhouse gas emissions, greenhouse gas projects, energy consumption and energy production of corporations.

The *Renewable Energy (Electricity) Act 2000* (REE Act) encourages additional electricity generation from renewable energy sources. It does this by establishing the large-scale renewable energy target which encourages investment in renewable power stations, and the small-scale renewable energy scheme which supports installations of small-scale renewable energy systems like household solar panels and solar hot water systems.

Subsection 30K(2) of the REE Act require applications for small-scale technology certificates to be entered into the clearing house to be accompanied by any information and documents required by the regulations. Subsection 30M(2) of the REE Act allows for the regulations to provide that certain persons (either generally or in particular circumstances) are not entitled to make an application to purchase small-scale technology certificates through the clearinghouse. Paragraph 30U(2)(c) of the REE Act provides that the regulations may set out rules that apply to the withdrawal of small-scale technology certificates from the clearinghouse by the Regulator.

Section 97 of the ANREU Act, section 77 of the NGER Act and section 161 of the REE Act provide 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 this Act.

Purpose

The *Energy Legislation Amendment (Information Requirements) Regulations 2023* (the Amendment Regulations) amend the following regulations made under the ANREU Act, NGER Act and the REE Act:

- *Australian National Registry of Emissions Units Regulations 2011*
- *National Greenhouse and Energy Reporting Regulations 2008*, and
- *Renewable Energy (Electricity) Regulations 2001*, collectively referred to as the Principal Regulations in this document.

Impact and Effect

The Amendment Regulations amend the Principal Regulations to modernise and streamline proof of identity requirements for participation in schemes regulated by the Regulator, and to simplify the requirements around the information that must be provided for entry into these schemes. The amendments include:

- giving individuals whose identity must be verified by the Regulator the option to elect to have their digital identity verified through the Australian Government Digital Identity System;
- allowing an individual who elects not to use the Australian Government Digital Identity System, the option of providing a document identifier instead of a certified copy of the full document (for example, a driver's licence number rather than a copy of the entire licence);
- expanding the list of persons authorised to certify copies of documents to be consistent with statutory declarations legislation (improving access to Australians with limited access to specialised services in remote and regional Australia); and
- simplifying and streamlining the other information applicants must provide to the Regulator.

The Principal Regulations set out the requirements by which applicants must verify their identity to the Regulator, and currently require the provision of hard copy certified documents. The Regulations also set out the information that must be provided by applicants, some of which is not required by the Regulator to regulate the schemes.

These amendments allow for the removal of inconsistencies in identification requirements between the existing regulations. They reduce regulatory burden on regulated entities by allowing individuals to elect to use digital identity verification through the Australian Government Digital Identity System, and by bringing document certification and verification requirements in line with other Commonwealth agencies.

Consultation

Public consultation was undertaken by the Regulator in September 2022, with 20 submissions received from the public. The responses were broadly positive, with several comments that changes to streamline and improve efficiency of application processes would be beneficial to applicants. No changes were made to the proposed approach following the consultation as respondents were generally supportive.

In the public consultation process, the Regulator highlighted that the proposed digital pathway for identity verification would be an alternative, voluntary, option to the existing entry pathway for new scheme participants providing certified copies of identification documents, should they wish to do so.

The Office of Impact Analysis has advised that a Regulation Impact Statement is not required (Reference OBPR22-02587) as the amendments are unlikely to have more than a minor regulatory impact.

The Regulator undertook a Privacy Impact Threshold assessment and determined that a further privacy impact assessment is not required as the amendment allow for online submission of information elements, but do not change the nature of the information collected.

Details and Operation

The enabling Acts (ANREU Act, NGER Act and REE Act) specify no conditions that need to be satisfied before the power to make the Amendment Regulations may be exercised.

The Amendment Regulations are a legislative instrument for the purposes of the *Legislation Act 2003*.

The Amendment Regulations commence on the day after they are registered on the Federal Register of Legislation.

Details of the Amendment Regulations are set out in Attachment A.

The Regulations are 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*. A Statement of Compatibility with Human Rights is set out in Attachment B.

Details of the Energy Legislation Amendment (Information Requirements) Regulations 2023

Section 1 - Name of Regulations

This section provides that the title of the Regulations is the *Energy Legislation Amendment (Information Requirements) Regulations 2023*.

Section 2 - Commencement

This section provides that the Regulations will commence the day after the instrument is registered.

Section 3 - Authority

This section provides that the Regulations are made under the:

- *Australian National Registry of Emissions Units Act 2011*
- *Renewable Energy (Electricity) Act 2000*, and
- *National Greenhouse and Energy Reporting Act 2007*.

Section 4 - Schedule(s)

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

Schedule 1 - Amendments

Australian National Registry of Emissions Units Regulations 2011

Item [1] – Regulation 3

This item repeals and substitutes paragraph (a) of the definition of ‘*certified copy*’ in regulation 3 to specify that persons prescribed for the purposes of paragraph 8(b) of the *Statutory Declarations Act 1959* can certify that a copy of a document is a true copy.

Item [2] – Regulation 3

This item inserts the definition of ‘*digital identity*’ of an individual, which means a distinct electronic representation of the individual that enables the individual to be sufficiently distinguished when interacting with online services.

Item [3] – Regulation 3

This item repeals the definition of ‘*documentary proof*’ of a person’s identity from regulation 3 as this is now captured under the definition of ‘*identity evidence*’ to reflect other amendments in this Schedule.

Item [4] – Regulation 3

This item inserts the definitions of ‘*document verification service*’, ‘*identity evidence*’ and ‘*identity service provider*’ in regulation 3.

The definition of ‘*document verification service*’ means the services provided by the Australian Government Document Verification System, or that service continuing in existence with a different name.

The definition of ‘*identity evidence*’ means if a person’s identity is to be verified by means of digital identity, the person’s digital identity. It also means that if a person is to be verified through the provision of documents, the documents required to be given by that person, and any document identifiers given in place of such documents.

The definition of ‘*identity service provider*’ means an accredited participant in the Australian Government Digital Identity System that provide a service that generates, manages, maintains, or verifies information relating to the identity of an individual.

Item [5] – Subregulations 9(3) to (5)

This item repeals and substitutes subregulations relating to information required to accompany a request to open a Registry account with the Regulator.

This amendment outlines that applications to open a registry account must be made on a form approved by the Regulator, and include the information required by the approved form. The amendments set out the information that the Regulator may require to be provided in an approved form, if that information is relevant to the person making the request, or an authorised representative, officer, employee or trustee of the person.

Item [6] – Subregulations 10(3) and (4)

This item repeals subregulations 10(3) and (4).

Item [7] – Subdivision 2.2.1 of Part 2 (heading)

This item amends the heading of Subdivision 2.2.1 to clarify that its provisions apply to both documents provided for proof of identification and ‘information’ obtained by the Regulator if verifying a digital identity through an identity service provider.

Item [8] – Subregulation 14(2)

This item repeals and substitutes subregulation 14(2) and provides that if a person provides the Regulator a document as identity evidence the document must be current, and the person must provide either the original (if requested by the Regulator) or a certified copy, or a document identifier in the place of the document.

Item [9] – Subregulation 14(2A)

This item amends subregulation 14(2A) to replace the reference to ‘documentary proof’ with ‘documents’ to reflect other amendments in this Schedule.

Item [10] – Subregulation 15(1)

This item repeals and substitutes subregulation 15(1) to specify that an application to open a Registry account must include identity evidence for the applicant, its authorised representatives, and other specified persons as applicable to the applicant.

Item [11] – Paragraph 15(2)(a)

This item amends paragraph 15(2)(a) to replace the reference to ‘paragraph (d)’ with ‘paragraph (d) and (e)’ to reflect other amendments in this Schedule.

Item [12] – Regulation 18

This item repeals and substitutes regulation 18 which concerns the process for verification of an individual’s identity, to reflect other amendments in this Schedule.

The revised subregulation sets out the identification procedures for verifying the identity of individuals who apply to open a Registry account, become a nominated person for a Registry account, or are associated with an entity whose identity is required to be verified under regulations 21 or 22.

The individual may elect to have the Regulator verify their identity by consenting to the transfer of their digital identity to the Regulator from an identity service provider. Alternately, the individual may elect to have the Regulator verify their identity by providing documentary evidence of the kind specified in subsection 18(4). If the Regulator is able to verify a document by providing the document identifier to the document verification service, the individual may provide the Regulator with their relevant document identifier instead of the document (for example, a driver’s licence number instead of a copy of that person’s driver’s licence).

Item [13] – Regulation 21

This item amends regulation 21 to specify that the table sets out the documentation or identity evidence that must accompany an application by an entity of the type mentioned in the table. This reflects other amendments in this Schedule.

Item [14] – Regulation 21 (table item 4, paragraph (d))

This item repeals and substitutes paragraph (d) of the table item 4 relating to the identity evidence required for the identification of a body corporate that does not have an ABN.

The revised paragraph (d) provides that identity evidence need only be provided for up to two executive officers.

Item [15] – Regulation 22

This item amends regulation 22 to specify that applications from a trust must be accompanied by the documentation and identity evidence set out in the table. This reflects other amendments in this Schedule.

Item [16] – Regulation 22 (table item 2)

This item repeals and substitutes table item 2 to specify that identity evidence of each trustee who is an individual must accompany an application by a trust. This allows the individual trustee to elect to use a digital identity, or to verify their identity through documentation.

Item [17] - Subregulation 32(2)

This item amends subregulation 32(2) relating to a registered owner of a Registry account nominating an authorised representative to have control of their account. The amendment requires the request be accompanied by identity evidence of the nominated authorised representative, to reflect other amendments in this Schedule.

Item [18] – Subregulation 32(2) (note 1)

This item amends note 1 of subregulation 32(2). The amendment ensures an application for an authorised representative to be accompanied by ‘identity evidence’, rather than ‘documentary proof’, to reflect other amendments in this Schedule.

Item [19] – in the appropriate position in Part 6

This item inserts a new regulation 71 that specifies that the above amendments to the *Australian National Registry of Emissions Units Regulations 2011* only apply after the commencement of the amending instrument and do not operate retrospectively or have retrospective effect.

Item [20] – Schedule 1 (note to Schedule heading)

This item repeals and substitutes the note to Schedule 1 heading to clarify how that Schedule relates to subsection 18(4)(a) of the Regulations.

Item [21] – Schedule 2 (note to Schedule heading)

This item repeals and substitutes the note to Schedule 2 heading to clarify how that Schedule relates to subsection 18(4)(b) of the Regulations.

National Greenhouse and Energy Reporting Regulations 2008**Item [22] – Regulation 1.03 (paragraph (d) of the definition of *identifying details*)**

This item repeals and substitutes paragraph (d) of the definition of ‘*identifying details*’ which concerns the information required for provision to the Regulator in the event that an entity does not have an ABN, ACN or ARBN.

The amendment sets out the alternative information required to be provided to the Regulator for identification purposes, such as a business or trading name (if different to the entity name), the entity’s street address or other unique identifying number issued to the entity.

Item [23] – Regulation 1.03 (paragraph (a) of the first definition of *identifying information*)

This item amends the definition of ‘*identifying information*’ to require a person’s business or trading name, if different from their name.

Item [24] – Regulation 1.03 (paragraph (f) of the first definition of *identifying information*)

This item amends the definition of ‘*identifying information*’ so that a body corporate that is not a foreign person is no longer required to provide the postal address of the executive officer.

Item [25] – Paragraph 3.02(1)(b)

This item amends paragraph 3.02(1)(b) which outlines the application requirements for registration under paragraph 15(c) of the *National Greenhouse and Energy Reporting Act 2007*, by replacing instances of ‘details of the controlling corporation’ with ‘details of the applicant’ for consistency throughout regulation 3.02.

Item [26] – Subparagraphs 3.02(1)(b)(i) and (ii)

This item amends subparagraphs 3.02(1)(b)(i) and (ii) to require an applicant provide its business or trading name if different from its legal name. This reflects the phasing out of trading names.

Item [27] – Subparagraph 3.02(1)(b)(vi)

This item amends subparagraph 3.02(1)(b)(vi) by substituting ‘controlling corporation’ with ‘applicant’ for consistency throughout regulation 3.02.

Item [28] – Paragraph 3.02(1)(c)

This item amends paragraph 3.02(1)(c) so that applicants are no longer required to provide the postal address of the executive officer.

Item [29] – Subparagraph 3.02(1)(e)(i)

This item repeals and substitutes subparagraph 3.02(1)(e)(i) to require the business name, if any, of each affected group entity. This reflects the phasing out of trading names.

Item [30] – Paragraph 3.02(1)(g)

This item simplifies the wording of paragraph 3.02(1)(g) which requires an applicant to provide to the Regulator any personal identification number previously issued by the Regulator to the applicant.

Item [31] – Paragraph 3.02(1)(h)

This item amends paragraph 3.02(1)(h) so that if the applicant is a foreign person the email address of the Australian contact must also be provided. This is to allow efficient communication with that person.

Item [32] – in the appropriate position in Part 7

This item inserts regulation 7.19 into Division 7.8 of Part 7 to specify that the above amendments to the *National Greenhouse and Energy Reporting Regulations 2008* apply to applications under sections 12 or 14 of the *National Greenhouse and Energy Reporting Act 2007* made after the commencement of the amending instrument. The amendments do not operate retrospectively or have retrospective effect.

Renewable Energy (Electricity) Regulations 2001**Item [33] – Subregulation 3(1)**

This item inserts a definition of ‘*digital identity*’, ‘*document verification service*’, ‘*identity evidence*’ and ‘*identity service provider*’ into the Regulations.

The definition of ‘*digital identity*’ of an individual means a distinct electronic representation of the individual that enables the individual to be sufficiently distinguished when interacting online with services.

The definition of ‘*document verification service*’ means the services provided by the Australian Government Digital Identity System, or that service continuing in existence with a different name.

The item defines ‘*identity evidence*’ as the definition set out in subsection 20Q(1).

The definition of ‘*identity service providers*’ refers to participants in the Australian Government Digital Identity System that provide a service that generates, manages, maintains, or verifies information relating to a person’s identity.

Item [34] – Subregulations 20H(2) and (3)

This item repeals and substitutes subregulations 20H(2) and 20H(3). New subregulation (2) specifies that applications from a person to enter small-scale technology certificates for sale into the clearing house must be accompanied by identity evidence for the applicant. New

subregulation (3) ensures consistent terms are used in the regulation without changing the operation of that subregulation. New subregulation (4) provides that identity evidence does not need to be provided if it has already been provided to the Regulator and remains current.

Item [35] – Subregulation 20K(2)

This item omits and substitutes references to ‘documents’ in subregulation 20K(2) with ‘identity evidence’ to reflect other amendments in this Schedule. This subregulation specifies the information required to be provided to the Regulator by the transferee of small-scale technology certificates from the clearing house.

Item [36] – Paragraph 20K(2)(f)

This item repeals and omits and substitutes references to documents in paragraph 20K(2)(f) with ‘identity evidence’, to reflect other amendments in this Schedule.

Item [37] – Subregulation 20K(3)

This item omits and substitutes references to ‘documents’ in subregulation 20K(3) with ‘identity evidence’, to reflect other amendments in this Schedule.

Item [38] – Subregulation 20K(5)

This item repeals and substitutes subregulation 20K(5) with subregulations (5) and (6) which provide that a transferee does not need to provide the Regulator with the specified information or identity evidence if the transferee has already provided the Regulator with that information or identity evidence, and it remains current.

Item [39] – Subregulation 20M(1)

This item omits and substitutes references to ‘documents’ in subregulation 20M(1) with ‘identity evidence’ in relation to the matters that must be included with an application by a person to purchase small-scale technology certificates from the clearing house. This reflects other amendments in this Schedule.

Item [40] – Paragraph 20M(1)(e)

This item repeals and substitutes paragraph 20M(1)(e) to replace the reference to ‘documents’ with ‘identity evidence’ to reflect other amendments in this Schedule.

Item [41] – Subregulation 20M(2)

This item repeals and substitutes subregulation 20M(2) with subregulations (2) and (3) which provide that an applicant to purchase small-scale technology certificates from the clearing house does not need to provide the Regulator with the specified information or identity evidence, if the applicant has already provided the Regulator with that information or identity evidence, and it remains current.

Item [42] – After regulation 20P

This item inserts regulation 20Q after regulation 20P. The amendment inserts a definition of ‘*identity evidence*’ which means if an individual consents to their identity being verified by means of digital identity, that digital identity. It also means that if a person provides documents to the Regulator to establish their identity, those documents. The definition also provides that if the Regulator is able to verify a document by providing the document identifier to the document verification service, a person may provide the Regulator their relevant document identifier in place of the document.

Item [43] – In the appropriate position in Part 9

This item inserts regulation 57 in Part 9 to clarify that the above amendments to the *Renewable Energy (Electricity) Regulations 2001* only apply on commencement of the amending instrument and do not operate retrospectively or have retrospective effect.

Statement of Compatibility with Human Rights

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

Energy Legislation Amendment (Information Requirements) Regulations 2023

The Regulations are 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 purpose of the *Energy Legislation Amendment (Information Requirements) Regulations 2023* (the **Regulations**) is to modernise and streamline proof of identity requirements for participation in schemes regulated by the Clean Energy Regulator (**Regulator**), and simplify the requirements around the types of information that must be provided for entry into these schemes.

The Regulations give effect to these objectives by amending the *Australian National Registry of Emissions Units Regulations 2011*, *National Greenhouse and Energy Reporting Regulations 2008*, and the *Renewable Energy (Electricity) Regulations 2001*, collectively referred to in this document as the '**Principal Regulations**'.

The changes to the Principal Regulations are considered minor and machinery as they support the objectives of their respective enabling Acts and increase options for Australians to interact with the Regulator. These changes allow an individual whose identity must be verified by the Regulator to voluntarily elect to have the Regulator access their digital identity through the Australian Government Digital Identity System.

The amendments do not remove existing pathways for interacting with the Regulator, they add ways to do so. Applicants seeking to interact with the Regulator will have more choices in the way in which they can verify their identity and begin the process of being a regulated entity under the Principal Regulations.

Human rights implications

The Regulations may engage the right to privacy under Article 17 of the International Covenant on Civil and Political Rights (**ICCPR**). No other applicable rights or freedoms are engaged.

The right to privacy – Article 17 of the ICCPR

Article 17 of the ICCPR prohibits unlawful or arbitrary interferences with a person's privacy, family, home and correspondence. The right to privacy includes respect for informational privacy, including the storing, using, and sharing personal information, and the right to control the dissemination of this information.

The rights contained in Article 17 of the ICCPR may be limited in specified circumstances when the limitation is established in a non-arbitrary manner and when authorised by law. For a limitation on a right to be considered non-arbitrary, the interference must be for a reason consistent with the relevant Convention and reasonable, necessary and proportionate in the context of a legitimate objective.

The Principal Regulations require the collection and use of information and documents, which may include personal information, by the Regulator in order to verify the identity of applicants to each scheme. The amendments to the Principal Regulations allow for an individual whose identity must be verified by the Regulator to voluntarily elect to have the Regulator access their digital identity through the Australian Government Digital Identity System. This allows a person to only provide identification documents once through the Australian Government Digital Identity System.

If the individual elects for the Regulator to access their digital identity, the Regulator will be able to receive digital attributes for the person from identity service provider's accredited under the Australian Government's Trusted Digital Identity Framework. The Australian Government Digital Identity System has been designed to protect user's privacy and security, and is managed by the Digital Transformation Agency.

The Regulator's use of digital attributes is subject to strict secrecy provisions. Part 3 of the *Clean Energy Regulator Act 2011 (CER Act)* provides a range of protections for information relating to the affairs of a person or corporation that is obtained by officials of the Regulator ('protected information'). This includes digital attributes obtained by the Regulator with the consent of the relevant individual. Protected information may not be disclosed by officials of the Regulator unless an exemption in Part 3 of the CER Act applies, which generally relate only to sharing within government for the purpose of climate change laws, law enforcement or safety. Existing secrecy provisions do not authorise the release of personal information that may be contained within protected information, and this restriction is not modified by the Regulations to ensure privacy of personal information is adequately protected.

The collection, storage and use of personal information collected by the Regulator through digital attributes is also subject to the *Privacy Act 1988* and information about the Regulator's privacy policies is available on its website.

The Regulations build upon existing provisions in the Principal Regulations and provide a lawful basis for obtaining, storing and sharing personal information appropriately. The provision and use of personal information occurs to the extent that it is necessary and reasonable for the identification of scheme applicants, and therefore the administration of these schemes.

The Regulations do not infringe the prohibition on unlawful or arbitrary interferences with a person's privacy, family, home and correspondence. The Regulations are establishing a voluntary avenue in which someone engaging with the Regulator can elect to have their existing verified digital identity accessed by the Regulator. Individuals and corporations can continue to provide documentary identification evidence to the Regulator, if preferred. The Regulations provide the option for a streamlined approach to the collection of information

that is reasonable and necessary for the administration and integrity of the Registry and legislative schemes.

Conclusion

This Legislative Instrument is compatible with human rights because, to the extent that it may limit those rights, that limitation is reasonable, necessary and proportionate.

Chris Bowen
Minister for Climate Change and Energy