

EXPLANATORY STATEMENT

Select Legislative Instrument 2012 No. 127

Issued by the Authority of the Minister for Climate Change and Energy Efficiency

Renewable Energy (Electricity) Act 2000

Renewable Energy (Electricity) Amendment Regulation 2012 (No. 5)

Section 161 of the *Renewable Energy (Electricity) Act 2000* (the Act) provides, in part, that the Governor-General may make regulations prescribing matters required or permitted by the Act, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

The Act establishes a Renewable Energy Target (RET) scheme to encourage additional electricity generation from eligible energy sources. The RET scheme is designed to ensure that 20 per cent of Australia's electricity supply is generated from renewable sources by 2020.

Under the Act, wholesale purchasers of electricity ('liable parties') must meet a share of the RET in proportion to their share of the national wholesale electricity market. The Act provides for the creation of Renewable Energy Certificates (RECs) by generators of renewable energy. One REC generally represents one megawatt-hour of electricity from eligible energy sources. Assistance is provided under the Act in the form of partial exemption certificates for electricity used in activities that are considered to be emissions-intensive and trade-exposed (EITE).

The *Renewable Energy (Electricity) Amendment Regulation 2012 (No. 5)* (the Regulation) amends the *Renewable Energy (Electricity) Regulations 2001* (the Principal Regulations) to support the provisions of the Act that deal with the provision of partial exemptions from liability in respect of the electricity acquired for use in carrying on EITE activities for the purposes of the Act.

The Regulation prescribes the manufacture of reconstituted wood-based panels as an additional EITE activity that is eligible under the Act.

A Human Rights Statement in respect of the Regulation is included at Attachment A.

Details of the Regulation are set out in Attachment B.

The Act specifies no conditions that must be satisfied before the power to make the Regulation may be exercised.

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 on the Federal Register of Legislative Instruments.

Consultation

The *Renewable Energy (Electricity) Amendment Regulation 2012 (No. 5)* reflects the outcomes of comprehensive consultation by the Department with the public and stakeholders in assessing activities for eligibility as EITE activities primarily under the Jobs and Competitiveness Program (the Program). The eligibility requirements are the same for EITE activities under the RET scheme.

The Department of Climate Change and Energy Efficiency (the Department) commenced a formal process for defining and determining the eligibility of EITE activities in February 2009 and has involved stakeholder workshops to assist in the creation of appropriate definition and boundaries for activities. The process also involved the approval of activity definitions by the Minister for Climate Change and Energy Efficiency for the purposes of data collection and publication on the Department's website. Audited data has been submitted to the Government on the basis of the approved activity definitions. Relevant industries that submitted data to the Government for the formal assessment of respective activities were consulted in regard to the drafting of the definitions to be included in the Regulations to ensure that the structure of the definitions generally reflects the conduct of the activities generally.

The policy framework for determining the eligibility of EITE activities for assistance under the Program was originally developed in 2009 and has been used to establish the eligibility of activities defined to date under the Renewable Energy Target (RET) scheme under the Act. The process for assessing activities and defining the technical aspects of the activities, including setting assistance rates and allocative baselines, is outlined in the paper titled *Establishing the eligibility of activities under the Jobs and Competitiveness Program* (which is available from the Department's website www.climatechange.gov.au).

Authority: Section 161 of the *Renewable Energy (Electricity) Act 2000*

Statement of Compatibility with Human Rights

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

Renewable Energy (Electricity) Amendment Regulation 2012 (No. 5)

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 Renewable Energy (Electricity) Amendment Regulation 2012 (No. 5)

The *Renewable Energy (Electricity) Amendment Regulation 2012 (No. 5)* (the Regulation) amends the existing *Renewable Energy (Electricity) Regulations 2001* (the Principal Regulations). The Principal Regulations provide an administrative framework to implement aspects of the *Renewable Energy (Electricity) Act 2000* (the Act) to establish the Renewable Energy Target (RET) scheme, including in relation to power station accreditation, eligibility requirements for renewable energy sources, eligibility requirements for solar water heaters and small generation units, the calculation methods for determining the number of certificates and establish the eligibility of activities for partial exemption certificates.

The Regulation prescribes an additional activity that is an emissions-intensive trade-exposed activity for the purpose of eligibility for partial exemptions from liability under the RET scheme.

Human rights implications

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

Conclusion

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

Greg Combet

Minister for Climate Change and Energy Efficiency

Details of the *Renewable Energy (Electricity) Amendment Regulation 2012 (No. 5)*

Section 1 – Name of Regulation

Section 1 provides that the title of the Regulation is the *Renewable Energy (Electricity) Amendment Regulation 2012 (No. 5)* (the Regulation).

Section 2 – Commencement

Section 2 provides that the Regulation commences on the day after it is registered on the Federal Register of Legislative Instruments.

Section 3 – Amendment of *Renewable Energy (Electricity) Regulations 2001*

Section 3 provides that the *Renewable Energy (Electricity) Regulations 2001* (the Principal Regulations) are amended as set out in Schedule 1.

Schedule 1 – Amendments

Item [1] – Paragraph 22X (1B) (b)

Item 1 amends paragraph 22X(1B) to provide that applications for the 2012 calendar year only in respect of the new activity to be prescribed in the Regulations under Part 44 of Schedule 6 (manufacture of reconstituted wood-based panels) may be made up until 31 July 2012. This is intended to provide extra time to applicants that are undertaking the newly prescribed activity to prepare the application and meet audit requirements. If additional activities are assessed as eligible and are included in the regulation before 31 July 2012, it is intended that an extension to the application date would also apply, where this is practicable and having regard to the timing of the regulation and the application.

Item [2] - Schedule 6, after Part 43

This item inserts a new part in Schedule 6 of the Principal Regulations to add a new EITE activity eligible for assistance under the Renewable Energy Target (RET) scheme – the manufacture of reconstituted wood-based panels.

Part 44 would set out a description of the EITE activity, the rate of assistance of the activity and the electricity baseline for the relevant product produced by undertaking the activity for the purpose of calculating a partial exemption from Large-scale Renewable Energy Target and Small-scale Renewable Energy Scheme liability for electricity used.

For this and all EITE activities, the assessment of eligibility was based on the operations of the activity in the baseline period July 2004 to December 2008. This is referred to as the period used to assess the eligibility of the activity in the descriptions of the activity outlined below.

Part 44 - Manufacture of reconstituted wood-based panels

Division 1 - Manufacture of reconstituted wood-based panels

Clause 728 - Manufacture of reconstituted wood-based panels

Clause 728 provides that the manufacture of reconstituted wood-based panels is the physical or chemical transformation of wood, including wood particles and residues (such as chips, savings, sawdust) into a reconstituted wood-based panel (such as particleboard and medium density fibreboard) with a density of greater than 500 kilograms per cubic metre (kg/m^3) and where the individual wood particles or fibres in the wood based panel have an average maximum dimension of no greater than 30 millimetres (mm).

The inputs of the activity have been defined to include woodchips, sawdust and wood-shavings. The outputs of this activity are saleable raw reconstituted wood-based panel with a density of greater than 500 kg/m^3 and where the wood-based panels have an average maximum dimension of no greater than 30 mm.

The activity does not include the upstream preparation of raw log, such as de-barking and chipping or the downstream processing of raw board into subsequent products. As such, the relevant facility is that where the output is actually produced and does not extend to separate facilities that may conduct upstream or downstream processing but not the activity as described.

Division 2 – Classification of activity

Clause 729 – Classification of activity

Clause 729 provides that the manufacture of reconstituted wood-based panels is an EITE activity eligible for assistance at the moderately emissions-intensive rate.

Division 3 – Electricity baseline for calculating partial exemption

Clause 730 – Electricity baseline for product

Clause 730 provides that the electricity baseline for calculating the amount of a liable entity's partial exemption for the manufacture of reconstituted wood-based panels is 0.372 megawatt-hours (MWh) per tonne of raw reconstituted wood-based panel that has a density of greater than 500 kg per cubic metre and has individual wood particles or fibres with an average maximum dimension of no more than 30 mm where the product is produced by carrying out the activity (as described in clause 728) and is of saleable quality (as defined in Regulation 22C of the Principal Regulations).

The reconstituted wood-based panels must be of saleable quality. Wood panels that are discarded or reprocessed because they do not meet output specifications are not of saleable quality. Wood panels of saleable quality do not include cover boards and other materials used for packaging.