

## **EXPLANATORY STATEMENT**

### **Select Legislative Instrument 2012 No. 182**

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. 6)*

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. 6)* (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 production of coke oven coke and the production of hydrogen peroxide as additional EITE activities that will be 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. 6)* 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](http://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. 6)**

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. 6)**

The *Renewable Energy (Electricity) Amendment Regulation 2012 (No. 6)* (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 additional activities that are emissions-intensive trade-exposed activities 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. 6)***

**Section 1 – Name of Regulation**

Section 1 provides that the title of the Regulation is the *Renewable Energy (Electricity) Amendment Regulation 2012 (No. 6)* (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] makes a minor amendment to the chapeau in paragraph 22X to accommodate the addition of item [2].

**Item [2] – After paragraph 22X (1B) (b)**

Item [2] 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 Parts 45 and 46 of Schedule 6 (production of coke oven coke and production of hydrogen peroxide) may be made up until 30 September 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 30 September 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 [3] – Schedule 6, clause 658(3)**

Item [3] replaces the description of the basis of issue for partial exemption certificates in relation to the integrated iron and steel manufacturing activity, to clarify that a tonne of coke oven coke that is produced as part of the integrated activity is not also able to be used as relevant product for the basis of the allocation of assistance under the stand-alone coke oven coke activity. This amendment is intended to prevent the same amount of production of coke oven coke being used as the basis for assistance under two different eligible activities. The amendment is not intended to change the process of coke oven coke production that is part of the integrated iron and steel manufacturing activity (as described in paragraph 320(1)(b) of Schedule 1).

#### **Item [4] – Schedule 6, paragraph 658 (4) (b)**

Item [4] makes a minor amendment to the chapeau in paragraph 658 (4) (b) to accommodate the addition of item [5].

#### **Item [5] – Schedule 6, after paragraph 658 (4) (b)**

Item [5] clarifies the description of the basis of issue for partial exemption certificates in relation to the integrated iron and steel manufacturing activity, so that a tonne of lime that is produced as part of the integrated activity is not also able to be used as relevant product for the basis of the allocation of assistance under the stand-alone lime activity. This amendment is intended to prevent the same amount of production of lime being used as the basis for assistance under two different eligible activities.

#### **Item [6] – Schedule 6, after Part 44**

Item [6] inserts two new parts in Schedule 6 of the Principal Regulations to add new EITE activities eligible for assistance under the Renewable Energy Target (RET) scheme – the production of coke oven coke and the production of hydrogen peroxide.

Parts 45 and 46 set out a description of the EITE activities, the rate of assistance of the activities and the electricity baselines for the relevant product produced by undertaking the activities for the purpose of calculating a partial exemption from Large-scale Renewable Energy Target and Small-scale Renewable Energy Scheme liability for electricity used.

### **Part 45 Production of coke oven coke**

#### **Division 1 Production of coke oven coke**

##### Clause 731

Clause 731 provides that the production of coke oven coke is the physical and chemical transformation of coal into coke oven coke, which proceeds at a temperature above 900°C, and where at least 80 per cent of the coke oven coke exhibits a Coke Strength after Reaction (CSR) value above 50 per cent and a Coke Reactivity Index (CRI) value of less than 40 per cent.

The activity as conducted during the period used to assess the eligibility of the activity involved the onsite crushing, grinding, conditioning, charging, heating and quenching of coal to produce coke oven coke.

The inputs of the activity have been defined to include coal. The output of this activity is saleable coke oven coke which exhibits a CSR value above 50 per cent and a CRI value of less than 40 per cent produced by the carrying on of the activity.

The activity does not include the upstream mining and extraction of coal.

## **Division 2 Classification of activity**

### Clause 732 – Classification of activity

Clause 732 provides that the production of coke oven coke is an emissions-intensive, trade-exposed (EITE) activity eligible for assistance at the highly emissions-intensive rate.

## **Division 3 Electricity baseline for calculating partial exemption**

### Clause 733 – Electricity baseline for product

Clause 733 provides that the electricity baseline for calculating the amount of a liable entity's partial exemption for the production of coke oven coke is 0.0109 megawatt-hours (MWh) per tonne of dry weight saleable coke oven coke where at least 80 per cent of production exhibits a CSR value above 50 per cent and a CRI value of less than 40 per cent (as described in clause 731) and is of saleable quality (as defined in Regulation 22C of the Principal Regulations).

The measurement of the relevant coke oven coke should be measured according to the accepted industry practice for production that conforms to:

- ASTM D3173 - 03(2008) Standard Test Method for Moisture in the Analysis Sample of Coal and Coke or AS1038.3 Pt 3 S2 - Determination of Moisture;
- AS 1038.4-2006 Coal and coke - Analysis and testing - Coke - Proximate analysis;
- AS 4264.2-1996 Coal and coke - Sampling - Coke - Sampling procedures;
- ASTM D5341 - 99(2010)e1 Standard Test Method for Measuring Coke Reactivity Index (CRI) and Coke Strength After Reaction (CSR);
- AS 1038.2-2006 Coal and coke - Analysis and testing - Coke - Total moisture;
- AS 1038.13-1990 Coal and coke - Analysis and testing - Tests specific to coke;
- AS 1038.5-1998 Coal and coke - Analysis and testing - Gross calorific value;
- AS 1038.6.1-1997 Coal and coke - Analysis and testing - Higher rank coal and coke - Ultimate analysis - Carbon and hydrogen;
- or the above referenced standards as updated from time to time.

The coke oven coke produced in this activity is not a relevant product for the emissions-intensive trade-exposed activity of integrated iron and steel manufacturing. As such, the coke oven coke produced in this activity is not eligible for assistance under the integrated iron and steel activity.

To be eligible for assistance, the coke oven coke must have been produced by carrying on the activity (as defined by clause 345) to be eligible as a relevant product. For example, if imported

coke oven coke is blended with product produced from the activity, only the domestically produced coke oven coke would be included in the tonnes of the relevant product.

The coke oven coke must be of saleable quality (as defined in Regulation 22C of the Principal Regulations). In particular, the tonnes of coke oven coke which are scrapped, lost or discarded are not to be included in the tonnes of relevant product.

## **Part 46 Production of hydrogen peroxide**

### **Division 1 Production of hydrogen peroxide**

#### Clause 734

Clause 734 provides that the production of hydrogen peroxide is the chemical transformation of hydrogen (H) feedstocks and oxygen (O) feedstocks to produce a crude aqueous hydrogen peroxide solution where the concentration of hydrogen peroxide ( $\text{H}_2\text{O}_{2(\text{aq})}$ ) is equal to or greater than 39 per cent with respect to mass, and subsequent production of saleable aqueous hydrogen peroxide solutions where the concentration of hydrogen peroxide ( $\text{H}_2\text{O}_{2(\text{aq})}$ ) is equal to or greater than 34 per cent with respect to mass.

The activity as conducted during the period used to assess the eligibility of the activity involved the production of hydrogen using a natural gas steam reformer, the production of crude hydrogen peroxide using the auto oxidation process and the purification of the crude hydrogen peroxide into saleable aqueous hydrogen peroxide solution.

The inputs of the activity have been defined to include hydrogen and oxygen. The output of this activity is saleable aqueous hydrogen peroxide solution.

### **Division 2 Classification of activity**

#### Clause 735 – Classification of activity

Clause 735 provides that the production of hydrogen peroxide is an EITE activity eligible for assistance at the moderately emissions-intensive rate.

### **Division 3 Electricity baseline for calculating partial exemption**

#### Clause 736 – Electricity baseline for product

Clause 736 provides that the electricity baseline for calculating the amount of a liable entity's partial exemption for the production of hydrogen peroxide is 0.858 MWh per tonne of 100 per cent equivalent hydrogen peroxide in saleable aqueous hydrogen peroxide of at least 34 per cent with respect to mass (as described in clause 734). The measurement of the relevant aqueous hydrogen peroxide solution should be measured according to the accepted industry practice for hydrogen peroxide production.

To be eligible for assistance, the aqueous hydrogen peroxide solution must have been produced by carrying on the activity (as defined by clause 734) to be eligible as a relevant product. For

example, if imported saleable aqueous hydrogen peroxide solution is blended with the product produced from the activity, only the domestically produced hydrogen peroxide would be included in the tonnes of the relevant product. Saleable aqueous hydrogen peroxide solution that is purified from crude aqueous hydrogen peroxide solution that is not produced within the activity is also not eligible for assistance.

The aqueous hydrogen peroxide solution must be of saleable quality (as defined in Regulation 22C of the Principal Regulations). In particular, the tonnes of hydrogen peroxide solution which are scrapped, lost or discarded are not to be included in the tonnes of relevant product.