

EXPLANATORY STATEMENT

Issued by Authority of the Minister for the Environment

Clean Energy Regulator Act 2011

Clean Energy Regulator Regulations 2018

The *Clean Energy Regulator Act 2011* (the Act) established the Clean Energy Regulator as an independent statutory authority to administer climate change mitigation schemes, including the Emissions Reduction Fund and its safeguard mechanism, Renewable Energy Target, National Greenhouse and Energy Reporting scheme and the Australian National Registry of Emission Units.

Section 57 of the 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.

Part 3 of the Act provides a range of protections for information that is obtained by the Regulator's staff in their official capacities and relates to the affairs of a person or corporation. Under the Act and other climate change laws a wide range of information relating to the Regulator's functions is required to be published (such as certain greenhouse and energy data and offset project information) or permitted to be used or disclosed, but data which is not required or allowed to be published or otherwise permitted to be used or disclosed must be protected.

Section 49 of the Act provides that certain listed or prescribed agencies or bodies may be disclosed protected information. The Clean Energy Regulator is not obliged to disclose information to any of the listed or prescribed bodies and the Chair of the Clean Energy Regulator must be satisfied that any information disclosed will enable or assist a particular agency to perform or exercise a function or power of that agency. Subsection 49(3) allows the Chair of the Clean Energy Regulator to impose conditions that must be complied with in relation to the disclosed information. Subsection 49(4) imposes a criminal penalty on anyone who breaches those conditions. The current list includes any Department of the Commonwealth.

Sections 49 and 57 provides that the Governor-General may make regulations to prescribe additional Commonwealth agencies and authorities, State and Territory government bodies, and professional disciplinary bodies to allow an official of the Clean Energy Regulator to disclose protected information to that body to assist in the performance of its functions or powers. The official must be authorised by the Chair of the Regulator and conditions may be imposed that ensure the information is appropriately protected after the disclosure. Many of the bodies and agencies that are disclosed information already operate under a range of statutory schemes that would also protect the information received or limit its use.

The purpose of the *Clean Energy Regulator Regulations 2018* (the Regulations) is to prescribe Commonwealth agencies and authorities, and State and Territory government bodies.

The Regulations reflect the current agencies and bodies that the Clean Energy Regulator works to implement the Emissions Reduction Fund and its safeguard mechanism (legislated through the *Carbon Farming Initiative Amendment Act 2014*), and other policy and program

developments since the Act was made. The benefits of sharing data include improving scientific research and data-sets, such as renewable energy research or understanding Australia's water resources, and to better regulate activities for health and safety and other public benefits. For example, the Clean Energy Regulator may come across information relevant to the work of state regulators of health or safety matters, such as Energy Safe Victoria. It is in the public interest that the State and Territory bodies with responsibility for regulating these matters can be disclosed such information, by the Clean Energy Regulator, in appropriate circumstances.

The Regulations prescribe a number of Commonwealth scientific, regulatory, fair trading and safety bodies, including the Commonwealth Scientific and Industrial Research Organisation and the Emissions Reduction Assurance Committee. The Regulations also prescribe a number of State and Territory fair trading, consumer protection and health, safety and emergencies bodies. The Regulations also prescribe the Clean Energy Council as a professional disciplinary body in its role in accrediting installers of solar panels under the Renewable Energy Target scheme and the United Nations Framework Convention of Climate Change as an international climate change body that assesses climate change information provided by Australia to meet our obligations under that convention.

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

The Office of Best Practice Regulation was consulted in relation to the making of the Regulation. The Office advised that a Regulation Impact Statement was not required as the change is likely to result in minor regulatory impacts and not change regulatory cost burden.

In August 2018, the Clean Energy Regulator undertook targeted consultation with the Commonwealth bodies proposed to be listed. The General Counsel or an appropriate other officer for each of these organisations was contacted by email and there was full support from all of the listed agencies. There were no negative responses to this consultation. Officers from the Clean Energy Regulator discussed the proposed amendments with representatives from the Fire and Rescue New South Wales and the Australasian Fire and Emergency Services Authorities Council (AFAC) at the Emerging Technology: Alternative Energy Safety Forum on 9 August 2018 and at subsequent meetings. The Clean Energy Regulator has received formal requests for location data of renewable energy devices from Fire and Rescue New South Wales and Australian Capital Territory Fire and Rescue, indicating the need for the proposed regulation. There were no negative responses to this consultation.

The Chief Executive Officer of the Clean Energy Council was consulted in August 2018 and fully supports this proposed amendment. The Department of the Environment and Energy contacted the United Nations Framework Convention on Climate Change Secretariat who did not raise objections.

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

The Regulations commence on the day after registration.

Details of the *Clean Energy Regulator Regulations 2018*

Section 1 – Name of Regulations

This section provides that the title of the Regulations is the *Clean Energy Regulator Regulations 2018*.

Section 2 – Commencement

This section provides for the Regulations to commence on the day after the instrument is registered.

Section 3 – Authority

This section provides that the *Clean Energy Regulator Regulations 2018* is made under the *Clean Energy Regulator Act 2011* (the Act).

Section 4 – Definitions

This section defines Act as the *Clean Energy Regulator Act 2011*.

Section 5 – Disclosure to certain agencies, bodies and persons

This section names additional bodies of the Commonwealth, State and Territory government bodies, a professional disciplinary body and an international climate change. This will allow the Clean Energy Regulator to disclose protected information with these agencies, bodies and persons, where the Chair of the Clean Energy Regulator is satisfied that the particular protected information, or a particular class of protected information, will enable or assist those agencies, bodies or persons to perform or exercise any of the functions or powers of the agency, body or person.

The Regulations prescribe the following agencies and authorities of the Commonwealth:

- the Commonwealth Scientific and Industrial Research Organisation;
- the Bureau of Meteorology;
- Geoscience Australia;
- the Murray-Darling Basin Authority;
- the National Offshore Petroleum Safety and Environmental Management Authority;
- Safework Australia;
- the Emissions Reduction Assurance Committee; and
- an agency or authority of the Commonwealth that deals with fair trading, consumer protection, or health, safety or emergencies.

The following State and Territory government bodies are also prescribed under the Regulations:

- New South Wales Fair Trading;

- Energy Safe Victoria;
- Office of Technical Regulator (South Australia);
- Emergency New South Wales; and
- a State or Territory government body that deals with fair trading, consumer protection, or health, safety or emergencies.

The following professional disciplinary body would also be prescribed under this section:

- Clean Energy Council

The Clean Energy Council is a professional disciplinary body for solar installers and the use of an accredited installers is a requirement to create small-scale technology certificates under the Renewable Energy Target. This role includes taking compliance action against installers for which information held by the Clean Energy Regulator may be useful. Information about the accreditation program is available at <http://www.solaraccreditation.com.au>.

The following international climate change body would also be prescribed under this section:

- United Nations Framework Convention of Climate Change Secretariat

Statement of Compatibility with Human Rights

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

Clean Energy Regulator Regulations 2018

This Disallowable 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

This Disallowable Legislative Instrument prescribes additional Commonwealth, State and Territory government bodies, a professional disciplinary body and an international climate change body that staff of the Clean Energy Regulator can share protected information with if authorised by the Chair of the Clean Energy Regulator.

Human rights implications

This Legislative Instrument may engage the right to the protection against arbitrary interference with privacy, protected in Article 17 of the International Covenant on Civil and Political Rights (ICCPR). The right to privacy in Article 17 of the ICCPR prohibits unlawful or arbitrary interferences with a person's privacy, family, home and correspondence. In order for an interference with a right not to be 'arbitrary', the interference must be for a reason consistent with the relevant Convention and reasonable in the particular circumstances.

Protected information under the *Clean Energy Regulator Act 2011* may include personal information, such as the names of individual installers of photovoltaic units, or the names and addresses of homeowners who have had such units installed.

Insofar as the Regulations interfere with the privacy of individuals, the interference is reasonable, necessary and proportionate to the ends sought. The Regulation permits the Chair of the Clean Energy Regulator to disclose protected information to prescribed agencies, bodies or persons. Such use or disclosure will only occur where the Chair of the Clean Energy Regulator is satisfied that particular protected information, or a particular class of protected information, will enable or assist those agencies, bodies or persons to perform or exercise any of the functions or powers of the agency, body or person. This is a legitimate objective consistent with the *Privacy Act 1988*.

Conclusion

This Disallowable Legislative Instrument engages with the right to privacy through the disclosure of personal and other protected information and does so in a reasonable and proportionate way, compatible with Australia's human rights obligations.

The Hon Melissa Price MP, Minister for the Environment