**EXPLANATORY STATEMENT**

Issued by authority of the Minister for Energy

*Renewable Energy (Electricity) Amendment (Small-scale Solar Eligibility and Other Measures) Regulations 2019*

The *Renewable Energy (Electricity) Act 2000* (the Act) establishes the Renewable Energy Target (RET) scheme. The RET scheme creates a market for renewable energy to deliver around 23.5 per cent of electricity from renewable sources by 2020.

The RET is administered as two schemes:

• The Large-scale Renewable Energy Target (LRET), which encourages investment in renewable power stations to achieve a legislated target of 33 000 gigawatt hours of additional renewable electricity generation by 2020, and

• The Small-scale Renewable Energy Scheme (SRES), which supports installations of small-scale renewable energy systems like household solar panels and solar hot water systems.

The RET scheme operates by allowing accredited renewable energy power stations and owners of eligible small-scale renewable energy systems to create a certificate for each megawatt-hour (MWh) of renewable electricity they produce (or displace). Liable entities (mainly electricity retailers) acquire these certificates which they must surrender annually to the Clean Energy Regulator (the Regulator) to comply with their RET obligations and to avoid payment of a shortfall charge.

Section 161 of 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 purpose of *Renewable Energy (Electricity) Amendment (Small-scale Solar Eligibility and Other Measures) Regulations 2019* (the proposed Regulations) is to amend the *Renewable Energy (Electricity) Regulations 2001* (the Principal Regulations) to clarify the eligibility of solar (photovoltaic) small generation units and the audit requirements for applications to amend exemption certificates.

1. Eligibility requirements for solar PV small generation units

Subsection 5(1) of the Act provides for the Principal Regulations to prescribe what constitutes a small generation unit and a solar water heater. Section 3(2) of the Principal Regulations limits an eligible solar photovoltaic (PV) small generation unit (SGUs) to a device that has a capacity limit of no more than 100 kilowatts (kW), and that generates no more than 250 MWh of electricity each year.

The proposed Regulations will clarify how the boundary of a solar PV device should be determined when the device is made up of multiple solar PV systems. It includes anti-gaming provisions to prevent large-scale systems from participating in the SRES.

Insufficient clarity around what constitutes the boundary of a solar PV device is creating challenges in maintaining the original intent of scheme to support only small-scale renewable energy systems under the SRES. The lack of clarity is creating uncertainty for scheme participants and resulting in time and costs for both scheme participants and the Regulator in assessing whether a solar device is eligible under the SRES. Providing clearer guidance will ensure the intent and integrity of the scheme is maintained and the regulatory burden on participants in interpreting requirements is reduced.

2. Amendments to the EITE exemption framework

Division 1A of Part 4 and Division 1A of Part 5 of the Act provide the legislative framework for the provision of exemptions for emissions-intensive trade-exposed (EITE) activities. Part 3A and Schedule 6 of the Principal Regulations prescribe the eligible EITE activities and processes for applying for, issuing and amending exemptions, including the methodology for calculating the amounts of these exemptions.

In December 2017, a large number of amendments were made to the framework for calculating the exemption certificates. In particular a new ‘electricity use method’ was introduced for the calculation of the exemptions. Some areas for improvement have since been identified with the drafting of the Regulations related to the new ‘electricity use method’.

The proposed Regulations will require a prescribed person applying to have an exemption certificate amended under section 46C of the Act to provide information describing the changes required to the certificates and whether there has been a material change in the way the use method is calculated. An audit report will be required to accompany the application if there has been a material change in the way the use method is calculated.

The proposed Regulations will also make minor technical amendments to clarify the intent or correct references.

An exposure draft of the proposed amendments was released for public comment in November‑December 2018. The industry respondents indicated support for the proposed Regulations and their overall intent.

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

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

The proposed Regulations will be a legislative instrument for the purposes of the *Legislation Act 2003*.

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

A statement of the Regulations’ compatibility with human rights is set out in Attachment B.

**ATTACHMENT A**

**Details of the *Renewable Energy (Electricity) Amendment (Small-scale Solar Eligibility and Other Measures) Regulations 2019***

**Regulation 1 – Name**

This regulation will provide that the title of the instrument is the *Renewable Energy (Electricity) Amendment (Small-scale Solar Eligibility and Other Measures) Regulations 2019.*

**Regulation 2 – Commencement**

This regulation will provide for the Regulations to commence on the day after they are registered on the Federal Register of Legislation.

**Regulation 3 – Authority**

This regulation will provide that the Regulations are made under the authority of the *Renewable Energy (Electricity) Act 2000*. In particular, section 161 of that Act provides the power for the Governor-General to make regulations that are required or permitted to be made or necessary or convenient for carrying out or giving effect to the Act.

**Regulation 4 – Schedules**

This regulation will provide for the amendments to be set out in Schedules. Schedule 1 part 1 clarifies the eligibility requirement for solar (photovoltaic) small-scale generation units Schedule 1 part 2 relates to audit requirements for applications to amend exemptions certificates for emissions‑intensive trade‑exposed (EITE) activities where there has been a material change to the way the use amount is estimated.

**SCHEDULE 1 – AMENDMENTS**

**Part 1 – Small generation units**

***Renewable Energy (Electricity) Regulations 2001***

**Item 1 Subregulation 3(1)**

This item will add a definition for a commercial meter. Key components of this definition are that:

* the meter must record electricity consumption;
* that record must be for the purposes of a financial transaction between unrelated parties; and
* the financial transaction must be about the consumption of electricity (rather than just the export of electricity).

**Item 2 After Subregulation 3(2)**

This item clarifies how the boundary of a device whose energy source is solar PV should be determined where multiple solar PV systems are installed. In particular, connected systems under this subregulation which in aggregate exceed 100kW are not ‘small generation units’ for the purposes of the definition of that term in the Act.

The boundary of the device is considered to be where the electricity generated by the solar PV system ceases to be under the control of the system owner and comes under the control of another entity, for example at the grid connection point (e.g. a meter with a National Meter Identifier (NMI) or Transmission Node Identifier) or at a commercial meter―as defined in subregulation 3(1)―subsidiary to the grid connection point (a commercial sub-meter). If there is a path for electricity to flow between multiple metering points behind the meter, they are considered interconnected and as such, all systems behind the meters will be within the boundary of one device. Box 1 provides some examples of device boundaries under different scenarios.

In relation to paragraphs 3(2A)(a) to (c) a system is connected to the grid at more than one connection point if there is a connection behind the grid connection points or behind commercial sub-meters that allows electricity to flow between the connection points or between commercial sub-meters at different grid connection points.

When a system is off-grid and does not interact with an external transmission or distribution network, the boundary of the device will be determined based on the system’s entirety, including all and any interconnected componentry.

To mitigate the risk of a person structuring a large solar development to avoid exceeding the device limits in subparagraphs 3(2)(c)(i) and (ii), this item will make systems that meet at least three out of the four criteria in subparagraphs 3(2A)(d)(i) to (iv) a single device. These criteria apply regardless of operational control of the 100kW systems and/or interconnecting infrastructure. For example multiple systems that are owned or managed jointly by the same party or built by the same party on adjoining or nearby lots and then individually sold will be considered a single device.

In relation to subparagraph 3(2A)(d)(iv) the electrical infrastructure (other than metering equipment) needed to enable the systems to connect to the grid may include transformers or substations that have been installed as part of the development and are outside of the meter(s).

The systems which make up a device may be installed at different times. However, if additional solar PV capacity is added to a device and it brings the total capacity over 100 kW, then the additional capacity will not be considered a small generation unit (SGU). Where the total capacity of the device exceeds 100 kW, the device may be accredited as a power station under the Large-scale Renewable Energy Target (LRET). For example, if an additional 40 kW of capacity is added to an 80 kW SGU, the device could be accredited as a single 120 kW power station. In this circumstance, large-scale generation certificates cannot be created for electricity generated from the part of the power station that is an SGU as certificates have already been received for this. Further clarity on this point is provided in Item 3.

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| **Box 1: Examples of device boundaries under difference scenarios.** In these examples the NMI is equivalent to the grid connection point and a commercial sub-meter is equivalent to a commercial meter (as defined in subregulation 3(1)) that is subsidiary to the connection point.**Scenario 1:** Five stores in a retail complex, each with a 50 kW system, have commercial sub-meters and all connect to the grid via one NMI. |
| * + Paragraphs 3(2A)(a) to (d) do not apply. These system are considered to be separate devices <100kW so are eligible SGUs. The commercial sub-meters defines the boundary of the devices.
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| **Scenario 2:** Five stores in a retail complex, each with a 60 kW system, have commercial sub-meters and all connect to the grid via one NMI. Two of the stores are electrically connected behind the commercial sub-meters. |
| * + For the two stores that are electrically connected behind the commercial sub-meters, paragraph 3(2A)(c) applies. The systems are considered to be one device >100 kW which is not an eligible SGU.
	+ For the remaining three stores which are not electrically connected to any other stores, paragraphs 3(2A)(a) to (d) do not apply. The 60 kW systems, are considered to be separate devices <100 kW so are eligible SGUs.
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| **Scenario 3:** In a retail complex with 2 stores, each with commercial sub-meters and all connect to the grid via one NMI. One store has two 60 kW systems and the other a single 60 kW system.  |
| * + For the store with two systems, paragraph 3(2A)(b) applies. The systems are considered to be one device >100 kW which is not an eligible SGU.
	+ For the store with one system, paragraphs 3(2A)(a) to (d) do not apply. The system is considered to be separate device <100kW so is an eligible SGU.
 |
| **Scenario 4**: A single commercial facility spread over 3 adjacent properties, each with a 50 kW system. All connected to the grid via one NMI. |
| * + Paragraph 3(2A)(a) applies. All systems are considered to be one device >100 kW so are not an eligible SGU. The NMI defines the device boundary.
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| **Scenario 5**: A single commercial facility spread over 3 adjacent properties, each with a 50 kW roof-top system. Each connected to the grid via separate NMIs. The electricity generated is used on-site. |
| * + Paragraphs 3(2A)(a) to (c) do not apply and the facility meets only one criteria (i.e. paragraph (i)) under 3(2A)(d)). The systems are considered to be separate devices so are all eligible SGUs. The NMI defines the device boundary.
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| **Scenario 6:** A single commercial facility spread over 3 adjacent properties, each with a 50 kW system. Each property is connected to the grid via a separate NMI but all properties are electrically connected behind the NMIs. |
| * + Paragraph 3(2A)(a) applies as the facility is electrically connected throughout (i.e. the systems are connected to the grid at more than one connection point). The systems are considered to be one device >100 kW so are not an eligible SGU.
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| **Scenario 7:** Two retail complexes on adjacent properties, each connected to the grid via a separate NMI. Each complex includes one store which has a commercial sub-meter and one store without a commercial sub-meter. The stores each have a 60kW system installed. The stores with a sub-meter have an electrical connection between the stores behind the commercial sub-meters. |
| * + For the two stores that are electrically connected, paragraph 3(2A)(c) applies. The systems behind the connected sub-meters are considered to be one device >100 kW so are not an eligible SGU.
	+ For the two stores that are not electrically connected to any other store or to the connection point at the adjacent retail complex, paragraphs 3(2A)(a) to (d) do not apply. These systems are considered to be separate devices <100kW so are eligible SGUs.
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| **Scenario 8**: A university is connected to grid via a single NMI with individual non-commercial sub-meters on individual buildings (the sub-meters are used to maintain building management systems). The university precinct includes a main building with a 100kW system and two sets of housing each with a 5 kW system. |
| * + Paragraph 3(2A)(a) applies as the sub-meters do not meet the definition of a commercial meter. All systems are considered to be one device >100kw so are not an eligible SGU. The NMI defines the device boundary.
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| **Scenario 9:** An apartment complex connected to the grid via a single NMI. The complex includes a communal precinct with a commercial sub-meter and a 100 kW PV system and four apartments with non-commercial metering, two of which have a 3 kW PV system. |
| * + For the communal building behind the commercial sub-meter, paragraphs 3(2A)(a) to (d) do not apply. The system is considered to be a device with a kilowatt rating of no more than 100 kW and is an eligible SGU.
	+ For the two 3 kW apartment systems, not covered by commercial sub-meters, paragraph 3(2A)(a) applies. The systems are considered to be a single device with a kilowatt rating of no more than 100 kW so will be an eligible SGU.
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| **Scenario 10:** A housing estate where each house has its own NMI and an individual 5kW system owned by the developer and leased to the householders**.** |
| * + Paragraphs 3(2A)(a) to (c) do not apply and the facility meets only one criteria (i.e. paragraph (i)) under 3(2A)(d)). The systems are considered to be separate devices so are all eligible SGUs. The NMI defines the boundary of the device.
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| **Scenario 11:** A solar farm developer has installed ten ground mounted 100 kW systems on ten adjoining sites each with separate NMIs that are connected to the grid via one substation installed as part of the development. There is no material onsite use of the electricity generated. |
| * + The development meets all four of the criteria in under paragraph 3(2A)(d). The systems are considered to be one device >100 kW so are not an eligible SGU.
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**Item 3 After paragraph 15(A)(c)**

This item will clarify that large-scale generation certificates cannot be created in respect of electricity generated by the part of the power station that is a small generation unit. This electricity is required to be excluded from the general formula in Regulation 14.

**Part 2—Exemption certificates**

***Renewable Energy (Electricity) Regulations 2001***

**Item 4 to 6 Subregulation 22S(1); paragraph 22S(1)(a); paragraph 22S(1)(b)**

Section 46A of the Act provides for prescribed persons to apply for an exemption certificate. Regulation 22S sets out the information to be included for certain prescribed persons in an application under section 46A of the Act. These persons are currently prescribed under regulation 22L (Prescribed person – liable entity changes (production calculation method)) or regulation 22LA (Prescribed person – liable entity changes (electricity use method).

These items will remove references to regulation 22LA. The information to be provided by a prescribed person under regulation 22LA (electricity use method) is now specified in subregulation 22S(3) (item 7).

**Item 7 At the end of regulation 22S**

Existing regulation 22LA allows a person to apply for a new exemption certificate when the liable entity (such as a retailer) for the site changes. A consequence of this is that a new method for calculating the exemption for the new liable entity needs to be proposed for that part of the year they are the liable entity. The existing certificate for the old liable entity also needs to be amended under regulation 22ZPA. This item will add additional information requirements such that if the application is made by a prescribed person under 22LA they must:

• explain whether or not there has been a material change in the method for calculating the exemption applied under Division 5A (electricity use method) for the certificate subject to the application compared to the existing certificate (or certificates) for the site and the year.

• describe the amendments that should be made to each existing exemption certificate relating to the site and the year under regulation 22ZPA and the reasons for the suggested approach.

This additional information is necessary for the Regulator to approve the new certificate and make appropriate amendments to the existing certificate.

**Item 8 Regulation 22T**

This item will make existing regulation 22T subregulation 22T(1) so that a subregulation 22T(2) can be added.

**Items 9 to 10 Regulation 22T; paragraph 22T(b)**

Section 46A of the Act provides for prescribed persons to apply for an exemption certificate. Regulation 22T sets out the information to be included for certain prescribed persons in an application under section 46A of the Act. These persons are currently prescribed under regulation 22M (Prescribed person – multiple liable entities (production calculation method)) or regulation 22MA (Prescribed person – multiple liable entities (electricity use method).

These items will remove references to regulation 22MA. The information to be provided by a prescribed person under regulation 22MA (electricity use method) is now specified in subregulation 22T(2) (item 11)

**Item 11 At the end of regulation 22T**

Existing regulation 22MA allows a person to apply for a new exemption certificate when a new liable entity (such as a retailer) is added to a site during a year while the existing liable entity may continue. A consequence of this is that a new method for calculating the exemption for the new liable entity needs to be proposed for that part of the year they are the liable entity. The existing certificates for the original liable entity or entities also need to be amended under regulation 22ZQA. This item will add additional information requirements such that if the application is made by a prescribed person under 22MA they must:

• explain whether or not there has been a material change in the method for calculating the exemption applied under Division 5A (electricity use method) for the certificate subject to the application compared to the existing certificate (or certificates) for the site and the year.

• describe the amendments that should be made to each existing exemption certificate relating to the site and the year under regulation 22ZQA and the reasons for the suggested approach.

This additional information is necessary for the Regulator to approve the new certificate and make appropriate amendments to the existing certificate.

**Item 12 Subregulation 22UG(4)**

This item will clarify that it is a material difference in the way the “use amount” for a liable entity is to be determined that could lead to the Regulator requesting an audit report to be included as part of the application. This is a clarification to the wording of the existing subregulation 22UG(4) which referred to the ‘method’ rather than ‘use amount’.

This item will also add new subregulations prescribing when an audit report will be required to accompany an application for an exemption certificate amendment made by a prescribed person mentioned in regulation 22LA and 22MA.

Where there has been a change in liable entity or a liable entity has been added and the electricity use method is used, subregulation 22UG(5) will require that an audit report is provided with an application where the applicant considers that the way the use amount should be identified has materially changed and the exemption is likely to be greater than 15,000 megawatt hours (MWh). The applicant may apply to the Regulator for a determination that an audit report is not required (i.e. an exemption). The exemption decision will be subject to judicial review but as a compliance tool is not subject to review in the Administrative Appeals Tribunal.

**Item 13 to 14 Subregulation 22UH(1); paragraph 22UH(1)(a)**

These items will correct a previous drafting error in the location of the words “who is”.

**Item 15 At the end of subregulation 22UH(3)**

This item will add an additional audit conclusion detailing requirements for an audit report to be submitted in circumstances where a request for an exemption certificate amendment has been made under regulations 22LA or 22MA and the requirements under the new subregulations 22UG(5) or 22UG(6) provisions have been met.

**Items 16 to 17 Subregulation 22ZHC(2); paragraph 22ZHC(2)(a)**

These items will correct a previous drafting error in the location of the words “unless subregulation (3) applies".

**Item 18 to 21 Subregulation 22ZHC(3), 22ZHC(4) and 22ZHC(5)**

These items will clarify that regulation 22ZHC prescribes one method, with a variable element (identification of the use amount). The way the use amount for a liable entity is identified is either through metering data or a formula determined by the Regulator. The amendments in items 18-21 clarify the terminology around the prescribed method.

**Item 22 Paragraph 22ZHC(5)(b)**

This item will clarify that in deciding on a formula the Regulator must give regard to the costs of implementing the formula.

**Item 23 After paragraph 22ZJ(h)**

This item will require the formula determined by the Regulator under subregulation 22ZHC(3) to be included in the exemption certificate information.

**Item 24 After paragraph 22ZN(2)(ba)**

This item will require the Regulator to have regard, when making an amendment to exemption certificates upon request, as to whether an audit report complying with regulation 22UH has been provided to the Regulator.

**Item 25 Regulation 22ZO**

This item will make a consequential amendment that was previously overlooked. As regulations 22ZPA and 22ZPQ also prescribe circumstances for the purpose of subsection 46C(3) of the Act, regulation 22ZO should refer to the entire subdivision.

**Item 26 Paragraph 22ZPA(d)**

This item will be a consequential amendment to update the paragraph references to reflect the amendments in items 4-7 which identify additional information to be provided in applications.

**Item 27 Paragraph 22ZQ(1)(d)**

This item will require the Regulator to be satisfied of the evidence referred to in 22T(1)(b) before amending the first certificate.

**Item 28 Paragraph 22ZQA(d)**

This item will require the Regulator to be satisfied of the evidence referred to in 22T(2)(b) before amending the earlier certificates.

**Item 29 Paragraph 22ZS(3)(b)**

This item will correct an incorrect cross-reference.

**Item 30 Subregulation 49(4)**

This item will correct a previous drafting error in the spelling of ‘give’.

**Item 31 Subregulation 49(4)**

This item will correct a previous drafting error referencing the “Minister” instead of the “Regulator”.

**Item 32 In the appropriate position in Part 9**

This item clarifies that the amendments related to amendments of exemption certificates in part 2 of Schedule 1 will apply to exemption certificates for 2019 and later years.

**ATTACHMENT B**

**Statement of Compatibility with Human Rights**

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

***Renewable Energy (Electricity) Amendment (Small-scale Solar Eligibility and Other Measures) Regulations 2019***

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 *Renewable Energy (Electricity) Amendment (Small-scale Solar Eligibility and Other Measures) Regulations 2019* (the Regulations)amends the *Renewable Energy (Electricity) Regulations 2001* in order to clarify the audit requirements for applications to amend exemption certificates and the eligibility of small generation units. These amendments are minor in nature and consistent with the intent of the existing regulations.

**Human rights implications**

The Regulations do not engage any of the applicable human rights or freedoms.

**Conclusion**

The Regulations are compatible with human rights as it does not raise any human rights issues.

**The Hon Angus Taylor MP, Minister for Energy**