

EXPLANATORY STATEMENT

Issued by Authority of the Assistant Minister to the Minister for Industry, Energy and Emissions Reduction
Parliamentary Secretary to the Minister for Industry, Energy and Emissions Reduction

Clean Energy Regulator Act 2011

Clean Energy Regulator Amendment (Disclosure of Protected Information) Regulations 2021

The *Clean Energy Regulator Amendment (Disclosure of Protected Information) Regulations 2021* (the Regulations) are consequential to reforms made to the eligibility to create small-scale technology certificates implemented by the *Renewable Energy (Electricity) Amendment (Small-Scale Renewable Energy Scheme Reforms and Other Measures) Regulations 2021*. The Regulations amend the *Clean Energy Regulator Regulations 2018* (the CER Regulations) to allow protected information to be disclosed to the Australian Crime Commission and professional disciplinary bodies who accredit solar installers and designers.

Part 3 of the *Clean Energy Regulator Act 2011* (the Act) provides a range of protections for information that is obtained by officials of the Clean Energy Regulator 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 Clean Energy 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. However, data which is not required to be published or otherwise permitted to be used or disclosed must be protected under the Act.

Section 49 of the Act provides that protected information may be disclosed to certain listed or prescribed agencies or bodies. The current list includes any Department of the Commonwealth. 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.

Sections 49 and 57 provide 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 Clean Energy Regulator and conditions may be imposed that ensure the information is appropriately protected after the disclosure. The Australian Crime Commission, which is also referred to as the Australian Criminal Intelligence Commission, also already operates under the information disclosure

scheme in Part IV of the *Australian Crime Commission Act 2002*, which protects information received and limits its use. The benefits of sharing data include improving scientific research and data-sets, such as renewable energy research 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 the Australian Crime Commission. Accreditation schemes under the *Renewable Energy (Electricity) Regulations 2001* play a central role in ensuring the integrity of small generation units installed under that scheme. Information sharing with the Clean Energy Regulator is essential to the effective operation of the co-regulatory arrangements in that scheme and addressing non-compliance by accredited designers and installers.

The proposal to amend the CER Regulations was included in explanatory material for the exposure draft of the *Renewable Energy (Electricity) Amendment (Small-Scale Renewable Energy Scheme Reforms and Other Measures) Regulations 2021* released for consultation from 22 October to 12 November 2021. No concerns were raised with the proposal.

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

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

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

The Regulations will commence on a number of specified days. One tranche of amendments will commence on the day after the Regulations are registered on the Federal Register of Legislation, and another on 1 July 2022 to align with commencement of provisions in the *Renewable Energy (Electricity) Amendment (Small-Scale Renewable Energy Scheme Reforms and Other Measures) Regulations 2021*.

The Department of Industry, Science, Energy and Resources confirmed with the Office of Best Practice Regulation (OBPR) that the *Integrity Review of the Rooftop Solar PV Sector* is an independent review that has undergone the equivalent process and analysis of a Regulation Impact Statement for the *Renewable Energy (Electricity) Amendment (Small-Scale Renewable Energy Scheme Reforms and Other Measures) Regulations 2021* and these changes are consequential to those amendments. The OBPR reference is ID 43825.

Details of the Clean Energy Regulator Amendment (Disclosure of Protected Information) Regulations 2021

Section 1 - Name

This section provides that the title of the Regulations is the *Clean Energy Regulator Amendment (Disclosure of Protected Information) Regulations 2021*.

Section 2 - Commencement

This section provides for the Regulations to commence as follows:

Provisions

Sections 1 to 4
and anything else not
covered by this table

Schedule 1

Schedule 2

Commencement

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

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

1 July 2022

Section 3 - Authority

This section provides that the Regulations are made under the Act. The power to make regulations in section 57 of the Act includes the power to amend regulations already made, with any doubt about this resolved by subsection 33(3) of the *Acts Interpretation Act 1901*.

Section 4 - Schedules

This section is a machinery clause that provides that the CER Regulations are amended or repealed as set out in the applicable items in the Schedule, and any other item in the Schedule has effect according to its terms.

SCHEDULE 1—Amendments commencing day after registration

Clean Energy Regulator Regulations 2018

Item 1 – After paragraph 5(1)(g)

This item inserts a reference to the Australian Crime Commission. This allows the Clean Energy Regulator to disclose protected information to the Australian Crime Commission where the chair of the Clean Energy Regulator is satisfied that the particular protected information, or particular class of protected information, enables or assists the Australian Crime Commission to perform its functions. The functions of the Australian Crime Commission are set out in section 7A of the *Australian Crime Commission Act 2002*.

SCHEDULE 2—Amendments commencing 1 July 2022

Clean Energy Regulator Regulations 2018

Item 1 – Subsection 5(4)

This item replaces the existing subsection 5(4) which prescribes the Clean Energy Council as a relevant professional disciplinary body. The new subsection 5(4) increases the number of entities that are prescribed as professional disciplinary bodies for the purposes of paragraph 49(1)(y) of the Act.

The new definition prescribes scheme operators that are a body corporate as professional disciplinary bodies. A scheme operator is defined with reference to Subdivision 2.3.4 of Division 2.3 of Part 2 of the *Renewable Energy (Electricity) Regulations 2001*, which will be inserted by Schedule 2 of the *Renewable Energy (Electricity) Amendment (Small-Scale Renewable Energy Scheme Reforms and Other Measures) Regulations 2021* to commence on 1 July 2022. Subdivision 2.3.4 provides a framework for entities to apply for accreditation scheme approval, in which the scheme operator is the person or persons who will be responsible for managing the scheme.

This new framework allows for multiple accreditation schemes to be relevant under the Renewable Energy Target where they meet the standards in the Regulations. The Clean Energy Regulator must be satisfied under regulation 20BH of the *Renewable Energy (Electricity) Regulations 2001* that the scheme operator's scheme includes relevant disciplinary measures and procedures for it to be a relevant professional disciplinary body under the Regulations. The Clean Energy Council already operates such a scheme which includes issuing demerit points to accredited installers, suspending installers, de-accrediting installers and complaints and appeals processes. Details of the Clean Energy Council's scheme and disciplinary powers are available at: <https://www.cleanenergycouncil.org.au/industry/installers>.

Persons managing an approved accreditation scheme for the purposes of Subdivision 2.3.4 of the *Renewable Energy (Electricity) Regulations 2001* commit an offence if they have been provided with protected information under subsection 49(2) of the *Clean Energy Regulator Act 2011* and they use that information or disclose it to another person. This allows appropriate measures to be taken to prevent scheme operators from using or disclosing protected information to another person, ensuring that information that has been disclosed to scheme operators remains appropriately protected.

Statement of Compatibility with Human Rights

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

Clean Energy Regulator Amendment (Disclosure of Protected Information) Regulations 2021

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 Legislative Instrument

Part 3 of the Act provides a range of protections for information that is obtained by officials of the Clean Energy Regulator in their official capacities and relates to the affairs of a person or corporation. This information can only be disclosed to the bodies listed or prescribed under section 49. 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.

This Legislative Instrument prescribes an additional Commonwealth government body and additional professional disciplinary bodies 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 engages the right to 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.

Insofar as the Regulations interfere with the privacy of individuals, the interference is reasonable, necessary and proportionate to the ends sought. The Regulations permit the Chair of the Clean Energy Regulator to disclose protected information to the Australian Crime Commission and to scheme operators within the meaning of Subdivision 2.3.4 of Division 2.3 of Part 2 of the *Renewable Energy (Electricity) Regulations 2001* in circumstances where the Clean Energy Regulator is satisfied that the scheme operator's scheme includes relevant disciplinary measures and procedures for it to be a relevant professional disciplinary body. Use or disclosure of protected information 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 the body receiving the information to perform or exercise any of its functions or powers. This is a legitimate objective consistent with the *Privacy Act 1988*. In particular, the Clean Energy Regulator may have information that is important for the scheme operators to investigate or verify breaches of a designer or installer accreditation scheme. The Australian Crime Commission also already operates under the information disclosure scheme in Part IV of the *Australian Crime Commission Act 2002*, which protects information received and limits its use.

Conclusion

This 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 Tim Wilson MP

**Assistant Minister to the Minister for Industry, Energy and Emissions Reduction
Parliamentary Secretary to the Minister for Industry, Energy and Emissions Reduction**