

## **REPLACEMENT EXPLANATORY STATEMENT**

Issued by the authority of the Minister for Climate Change and Energy

*Renewable Energy (Electricity) Act 2000*

*Renewable Energy (Electricity) Amendment (Small-Scale Renewable Energy Scheme Reforms and Other Measures) Regulations 2021*

The *Renewable Energy (Electricity) Amendment (Small-Scale Renewable Energy Scheme Reforms and Other Measures) Regulations 2021* (the Regulations) amend the *Renewable Energy (Electricity) Regulations 2001* (the Principal Regulations) primarily to implement reforms to the Small-scale Renewable Energy Scheme (SRES) arising from the Government's response to the Clean Energy Regulator's (the Regulator) *Integrity Review of the Rooftop Solar PV Sector* (Integrity Review). The Government agreed to several recommendations that were aimed at improving quality, safety and compliance under the SRES.

The Regulations also contain other minor amendments to improve and clarify specific matters relating to the administration and operation of the Renewable Energy Target (RET) scheme.

The *Renewable Energy (Electricity) Act* (the Act) established the RET scheme which operates until 2030. The RET is administered as two schemes:

- The Large-scale Renewable Energy Target, which encourages investment in renewable power stations; and
- The 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 Regulator to comply with their RET obligations and to avoid payment of a shortfall charge.

The SRES provides a financial incentive for households and businesses (system owners) to install small-scale renewable energy systems, predominantly rooftop solar, in the form of small-scale technology certificates (STCs). The volume of STCs that an owner of an eligible system is entitled to is based on the amount of renewable electricity the system is expected to generate to the end of the scheme in 2030.

System owners typically assign the right to create STCs to a registered agent in return for a discount on the system and installation cost. To manage the potential risks around STC entitlements, there are a number of eligibility requirements that must be met in order to create STCs for a small generation unit (e.g. a solar photovoltaic (PV) system).

At the request of the then Minister for Energy and Emissions Reduction, the Regulator conducted a review into the integrity of the rooftop solar PV sector (the Review).

The Regulator found that aspects of the SRES regulatory framework could be made more effective in managing the quality and compliance risks in this rapidly growing sector.

The Government accepted the Review recommendations, including:

- giving the Regulator responsibility for setting the rules and framework for installer accreditation and the listing of approved solar PV components;
- implementing new reporting requirements for installers, solar retailers and manufacturers; and
- giving the Regulator more effective powers to monitor and enforce compliance.

The Regulations implement these recommendations through specific measures that:

- Establish new requirements for solar PV system installers and retailers to each make a written statement in order for an owner of a solar PV system to be eligible for STCs.
  - This will provide greater protection to consumers and inform them as to the performance and complete installation of a solar PV system and increase the accountability of retailers and installers.
- Allow the Regulator to take a more direct role in setting the requirements for solar PV components that are eligible for STCs.
  - This will ensure there is an appropriate framework for determining and listing only those solar panels and inverters that meet required standards under the scheme and provide better protections for consumers in ensuring that they get what they pay for and that systems are eligible for the SRES.
- Enable the Regulator to disqualify retailers, including management and officers, who make a false written statement from making further statements regarding eligibility for STCs, and to disqualify new retailers linked to other disqualified retailers.
- Provide the Regulator with responsibility for setting the rules and framework for installer accreditation underpinning eligibility to create STCs and to approve eligible installer accreditation schemes.
  - This is intended to provide greater assurance to consumers that solar installers operating under the SRES are appropriately trained and competent, and understand their obligations.
  - To remain eligible to provide accreditation, the accreditation body (or bodies) will be accountable to the Regulator for service and quality standards, fees charged and public reporting. The Regulator could remove an accreditation scheme or body where the relevant service or quality standards are not met.

In addition, the Regulator and the Department of Industry, Science Energy and Resources (the Department, which was then responsible for the Regulations, now administered by the Department of Climate Change, Energy, the Environment and Water) have identified a number of minor administrative amendments needed to improve or clarify operation of the RET.

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.

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

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

Public consultation was undertaken on the exposure draft of the Regulations from 22 October to 12 November 2021. An exposure draft of the Regulations and a consultation commentary were published online. The Department delivered an online information session on 3 November 2021 and subsequently published a question and answer document that covered issues raised in the information session. The Department and the Regulator also held consultation meetings with peak industry bodies to discuss the Regulations. Submissions were received from 25 entities, including individuals, businesses and industry bodies. These responses were considered and adjustments to the Regulations were made where appropriate and possible.

The Regulations commenced on a number of specified days. One tranche of amendments commenced on 1 January 2022, one on 1 April 2022 and another on 1 July 2022. The mechanical provisions start on the day after the Regulations are registered on the Federal Register of Legislation. Details of commencement dates are provided in **Attachment A**.

The Department confirmed with the Office of Best Practice Regulation (OBPR) that the Integrity Review is an independent review that has undergone the equivalent process and analysis of a Regulation Impact Statement. A separate Regulation Impact Statement is not required. The OBPR reference is ID 43825.

**Details of the *Renewable Energy (Electricity) Amendment (Small-Scale Renewable Energy Scheme Reforms and Other Measures) Regulations 2021***

**Section 1 - Name of Regulations**

This section provides that the title of the regulations is the *Renewable Energy (Electricity) Amendment (Small-Scale Renewable Energy Scheme Reforms and Other Measures) Regulations 2021*.

**Section 2 - Commencement**

This section provides that the regulations commence as follows:

<b>Provisions</b>	<b>Commencement</b>
Sections 1 to 4 and anything else not covered in this table	The day after the regulations are registered on the Federal Register of Legislation.
Schedule 3 and Schedule 4	1 January 2022
Schedule 1	1 April 2022
Schedule 2	1 July 2022

**Section 3 - Authority**

This section provides that the regulations are made under the Act. The power to make regulations in section 161 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*.

Schedules 1 and 2 primarily relate to the prescription of conditions for the creation of certificates for small generation units for subsection 23A(1A) of the Act. The conditions prescribed are necessary and proportionate to the need to ensure the integrity of the certificates created. In particular, the scheme creates certificates for renewable generation from small generation units over the period to 2030. The renewable energy generation assumptions in these calculations depend on systems being installed properly and performing as intended. The need to use accredited designers and installers has been part of the scheme for over ten years and is being strengthened by the regulations, along with new requirements on solar retailers.

Relevantly for the regulations, section 160A of the Act allows the regulations to incorporate instruments or writing as in force from time to time, and section 160B of the Act allows the regulations to confer on the Regulator powers to make administrative decisions.

#### Section 4 - Schedules

This section is a machinery clause that provides that the Principal Regulations are amended as set out in the Schedules.

The substantive provisions of the regulations are set out in four Schedules. Schedule 1 relates to conditions for the creation of STCs. Schedule 2 introduces new requirements for designer and installer accreditation schemes. Schedule 3 includes amendments related to the removal of solar water heaters (SWH) from the Register of SWHs (the Register). Schedule 4 includes amendments related to prescribed bodies, emission-intensive trade-exposed (EITE) exemption processes and other minor aspects of the Principal Regulations.

## **SCHEDULE 1—Small generation units—certificates and inspections**

This schedule implements recommendations from the Review by establishing reporting requirements for installers, solar retailers and manufacturers, and giving the Regulator more effective powers to monitor and enforce compliance. This strengthens the requirements regarding eligibility for support under the SRES for small generation unit installations.

This schedule contains measures that specify conditions that would need to be met for a small-scale generation unit (solar PV system) to be eligible for STCs under the SRES. The conditions include that:

- the installer is on site during an installation;
- the solar PV module or inverter is on the approved list of components;
- the installation complies with relevant electrical safety and other requirements governed by the local, state and territory government; and
- the person eligible to create STCs is provided with a written statement:
  - by the installer outlining that specific requirements have been met, as well as confirming the system has been installed in accordance with the design; and
  - by the retailer who sold the consumer the system outlining that the system is complete and generating (where possible) and that the consumer has been provided information on the expected value and performance of the system in terms of such measures as feed-in tariffs, export limits and energy savings.

Some of the conditions are already requirements in accordance with the Regulator’s guidelines or the accreditation scheme and the regulations confirm those requirements in the Principal Regulations.

This schedule also includes measures that support integrity and compliance under the SRES, including by:

- extending the ability for the Regulator to declare a component or designer or installer ineligible under the SRES;
- enabling the Regulator to nominate a body that can maintain and publish an approved list of components relevant to a solar PV installation; and
- requiring that serial numbers for components are registered with the Regulator.

To the extent information is collected under the revised provisions, the secrecy arrangements in the *Clean Energy Regulator Act 2011* apply and as well as protections for personal information under the *Privacy Act 1988* (see discussion in the Statement of Compatibility with Human Rights).

### ***Renewable Energy (Electricity) Regulations 2001 (the Principal Regulations)***

#### **Item [1] – Subregulation 20(1)**

This item removes the reference to ‘in the circumstances mentioned in regulation 20AC’ which is no longer needed given other amendments in this Schedule.

### **Item [2] – Paragraph 20(1)(b)**

This item clarifies that the number of STCs that can be created by a solar PV system must be calculated using the zone rating published at the time the system was installed. This ensures that any changes to zone ratings cannot have retrospective effect on systems that have been installed, but where certificates are not yet created.

### **Item [3] – Regulation 20AC (heading)**

This item replaces the heading of the regulation with a new heading that refers to the conditions under which STCs may be created for a small generation unit, in accordance with section 23A of the Act. This is intended to clarify that STCs cannot be created for an installation unless the specified conditions have been met.

### **Item [4] – Subregulation 20AC(1)**

This item replaces the current subregulation 20AC(1) to clarify that in order for STCs to be created for the purpose of subsection 23A(1A) of the Act in relation to a small generation unit, the unit and its installation must meet the design and installation conditions outlined in this regulation.

### **Item [5] – Paragraph 20AC(2)(e)**

This item provides that STCs cannot be created for a small generation unit if the installer or designer of the unit was declared ineligible by the Regulator, under regulation 20AG or 47, previous to either:

- the day of installation - if installation was completed in a single day, or
- the day installation began - if installed over more than one day.

This is intended to ensure that if an installer or designer has been declared ineligible, any subsequent designs or installations after the date they were declared ineligible would not be eligible for STCs. In the event that an installer or designer has been reinstated as eligible under the SRES, designs or installations that occur after that reinstatement of eligibility would be eligible to create STCs.

The ability for the Regulator to declare that an installer or designer is ineligible to participate in the SRES if in breach of their requirements has existed since 2010 under regulation 47. These provisions clarify and extend that circumstance to support scheme integrity, which is further explained below in relation to regulation 20AG.

### **Item [6] – After subregulation 20AC(2)**

This item inserts additional conditions that would need to be met in order for a small generation unit solar PV installation to be eligible to create STCs. In particular, STCs may not be created for an installation of a solar PV system unless all of the following are met:

- The installer who installed the unit, or supervised the installation, is an eligible accredited installer who is on site during the installation as required by their accreditation scheme. At the time of installation, a declaration of ineligibility made by the Regulator is not in place (as indicated in item 5).

- The accredited installer responsible for the installation needs to be on site for the majority of the time that the installation takes place, whether that person was undertaking the installation themselves or supervising others. The requirements relating to being onsite are a central part of the accreditation schemes for the installation of units and it is appropriate to reference those requirements rather than imposing different or inconsistent requirements in the Regulations.
- The installer also needs to provide evidence of being on site during the installation, such as photographic evidence (with time and date metadata or geo-location data) that they were on-site at the appropriate times in accordance with the rules of the installer accreditation scheme. This is set out further in relation to item 10 below.
- The serial numbers for solar PV module and inverter components have been provided in accordance with the requirements outlined in regulation 20AD. This is explained further below and helps ensure that only approved modules and inverters are used.

#### **Item [7] – Subregulation 20AC(4)**

This item repeals and replaces subregulation 20AC(4) which concerns compliance with State, Territory and local government requirements. The revised subregulation is simplified to ensure the installation complies with all local, State or Territory requirements, such as in relation to electrical wiring and safety, as well as work health and safety or the siting of the unit. For example, this would include all requirements relating to electrical safety by state and local governments as well as rules regarding wiring and connection related to distribution network providers. Compliance with existing provisions in subregulations 20AC(3) and 5(c) in relation to electrical wiring and safety would also be required.

Overall, the intent of the subregulations is that the Commonwealth benefit of certificates should not be available for installations that fail to comply with relevant laws and regulations applicable to the installation and enforced by relevant State, Territory and local government bodies and agencies. Installers are aware of these requirements, through both installer accreditation schemes and requirements of their State or Territory electrical licences.

#### **Item [8] – Subregulation 20AC(5); Item [9] – Paragraphs 20AC(5)(a) and (b); and Item [10] – Paragraph 20AC(5)(d) to (f) (including the note)**

##### **Written statements by the installer**

Items 8 to 10 relate to the revised requirements for a designer and an installer to make statements to the person eligible to create STCs, which would be a condition of that person being eligible for STCs for a small generation unit. Subregulation 20AC(5) already requires written statements from an installer about a number of detailed matters associated with the installation and making false or misleading statements can result in a civil penalty under section 24B of the Act. The items amend a number of aspects of subregulation 20AC(5) to ensure it continues to remain relevant to current requirements and improve scheme integrity.

These items outline the requirement that a person entitled to create STCs (which is usually the home or business owner as the consumer, or a registered agent that has been assigned the rights to create STCs) has obtained the information as specified in regulation 20AC before



being able to create the STCs. The information would be contained in a statement from the installer that attests to or verifies that aspects of the installation comply with requirements and are consistent with what the consumer agreed to with the solar retailer.

In certain situations, the installer may be the same person as the designer of the installation. However, in circumstances where the designer and installer are different, separate requirements would be placed on the designer and installer to make the statements.

Item 9 outlines the information that a designer and an installer of a small generation unit installation would need to provide in a written statement to the person entitled to create STCs for the installation. If the designer and installer are the same person and the installer is accredited for system design, then just the installer would need to provide the information in a written statement. The information must confirm the following:

- The details of the designer of the installation, including name and accreditation scheme under which they are accredited as well as the accreditation number;
- A statement that the designer complied with the relevant requirements of the accreditation scheme in designing the unit;
- The details of the installer, including name and accreditation scheme under which they are accredited as well as the accreditation number;
- A statement that the installer complied with the relevant requirements of the accreditation scheme in installing the unit; and
- A statement that the installation complied with all local, State or Territory requirements, including in relation to electrical wiring and safety (to mirror the requirements in subregulation 20AC(4)).

This structure means that where the installer is not accredited as a designer, two statements are needed, one by the installer and another by the designer. Where the installer is accredited as a designer, but did not design the system, either of the following options are acceptable:

- Separate statements from the designer under paragraph 20AC(5)(aa) and installer under paragraph 20AC(5)(a); or
- A statement from the installer under both paragraph 20AC(5)(aa) about the design and paragraph 20AC(5)(a) about the installation.

Item 10 outlines additional information that the installer would be required to attest to in a written statement to the person eligible to create the STCs.

- The written statement must outline that the installer has a copy of the design of the system and the system has been installed, in all material respects, in accordance with that design. The design may be the size, layout and components that comprise the system that was agreed with the solar PV retail company at the time the contract was agreed or the order was made.
- In the event that the installer decides it is necessary to modify the design during the installation, the written statement should outline that the modifications are consistent with the requirements of the accreditation scheme. These modifications may arise as a result of unexpected issues with the roof space or shading that was not able to be detected through the design phase and result in adjustments to the placement of panels, for example. It would be expected that the modifications and why they were made are communicated to the consumer.

- The installer would also be required to include in the written statement that the system will perform in accordance with the design or modified design. It is expected that this statement would take into account information it is reasonable for the installer to be aware of which would mean that this would not occur. For example, if the inverter used would not support the intended output of the system.

These requirements are intended to capture the variety of business models, noting that not all installers would work directly to a retailer and may not have access to confidential contract information. These provisions are intended to provide the consumer (usually home owner or business) with a level of assurance that the installation complies with safety and quality standards, and is consistent with the consumer expectations as agreed with their solar retailer through the purchasing process.

However, this would not detract from the solar retailer's responsibility to quote responsibly and ensure the design and installation is consistent with that quote. Overall, the new requirements are intended to simplify the current list of items to be outlined in statements in the Regulations.

The Regulations also require that a written statement by an installer outlining to the person eligible to create STCs that:

- the solar PV module used in the installation, and any inverter that is included with the installation, was on the list of approved modules and inverters at the time of installation (and was not otherwise excluded). This is explained further in relation to subregulations 20AC(9) and (10) below;
- any inverter that is part of a grid-connected installation was, at the time of the installation, compliant with *AS/NZS 4777.2:2020, Grid connection of energy systems via inverters, Part 2: Inverter requirements* (as existing from time to time). It is also expected that the inverter is commissioned in accordance with the standard and the supplier of the inverter would be expected to guarantee that the inverter did comply with this standard. The provision of serial numbers under regulation 20AD would also assist to verify this; and
- the installer was on site during the installation, along with evidence from the installer of the unit that they were on site.

The onus would be on the installer to:

- ensure that they comply with the requirements for STC eligibility and electrical safety;
- ensure that the components being installed are on the list of approved modules and inverters (as relevant) for STC eligibility, and that the installation of those components complies with the relevant standards; and
- provide the person entitled to create STCs for the system with confirmation in writing (electronically or in hard copy) that the system is eligible for STCs and complies with electrical safety requirements and has been installed in accordance with the consumer's expectations outlined in the design.

The Australian Standard: *AS/NZS 4777.2:2020, Grid connection of energy systems via inverters, Part 2: Inverter requirements*; can be obtained from <https://www.standards.org.au> for around \$250. It is a central resource for all installers and is part of their training.

Therefore, those who need to refer to the standard would be expected as an industry participant to have access to it. The general public will not require a copy to ensure their

compliance with the legislation because the onus for compliance with the standard is on the installer. It is important that relevant updates are incorporated to ensure that requirements under the Principal Regulations are not different to those under the accreditation schemes, electrical licensing requirements and for distribution network connection. It is incorporated consistently with section 160A of the Act.

In general, Australian Standards may be accessed from public libraries such as the National Library of Australia. Persons who need to access the specific Australian Standard as part of complying with the Regulations are licenced electricians who are members of an accreditation scheme. Licensed electricians would need a thorough knowledge of the standard in order to access accreditation to safely install solar panels. Accredited installers would be expected to have ready access to the documentation as part of their State and Territory electrical licencing requirements and accreditation with the Clean Energy Council (or equivalent). Any cost for this access would be incurred as part of the ordinary course of their licencing requirements and would be immaterial compared with the value from installing solar systems each year in Australia. Compliance with AS/NZS 4777.2:2020 is also a requirement under the National Electricity (NT) Rules.

#### **Item [11] – After subregulation 20AC(5)**

##### **Written statements by the solar PV retailer**

Item 11 relates to the new requirement for a retailer of a solar PV installation to make a statement to the person eligible to create STCs, which would be a condition of that person being eligible for STCs for a small-scale solar PV system.

Solar retailers are often the first point of contact for consumers and are usually responsible for the acquisition of the solar PV system components and their installation (or for sub-contracting the installation). However, retailers have not previously been subject to the regulatory framework of the SRES (unless the retailer is also a registered agent).

The Regulations include new conditions for STC eligibility that refer to the solar retailer from whom the owner purchases the system. They include that the person entitled to create the STCs for the solar PV system that has been installed must have a written statement from the solar PV retailer that sold the unit which outlines the following:

- The name of the accredited installer of the unit and whether or not the installer is an employee or a subcontractor of the solar retailer. This transparency helps identify any potential conflicts in the roles of each party, but is not intended as a barrier to the variety of business models in the sector.
- That the unit will perform in accordance with the contract (or the quote accepted) for the sale of the unit to the owner of the unit. To make this statement the retailer would need to verify that the unit was installed to the agreed design and with the agreed components. The statement that the solar retailer is required to make includes a qualification that the performance of the unit is not certified to the extent that circumstances outside the retailer's control would prevent the unit performing according to the contract. For example, the statement is not intended to indicate that the unit would perform to the standard in the contract if a structure is subsequently built after installation which shades the solar PV system.
- That the unit is complete and generating electricity, or that the system is capable of generating electricity in the event that confirmation that the system is generating may not be possible, such as when the solar resource is not available.

- That the unit is connected to the grid (for grid-connected systems) or that the solar retailer has completed its obligations under the contract in relation to grid connection. This may be necessary in circumstances where it is not possible to provide assurance of grid connection, such as where distribution network requirements mean that grid connection occurs at a later date after installation.
- Information about:
  - the feed-in tariffs and export limits that are specific to the unit (and which are known to be in place at the time or come into effect in future); and
  - one or more of the following for the unit:
    - (i) the expected payback period;
    - (ii) the expected energy savings;
    - (iii) the expected cost savings.

The information must be true, correct and complete. However, noting that there will likely be a degree of variability in these measures, it is intended that the solar retailer advises consumers of the basis on which it estimates the expected payback period, energy saving and/or cost savings and notifies if those estimates depend on assumptions or could be subject to change. Given the basis for the installation is likely to be a decision by the consumer based on information provided by the retailer on the value of its product, it is reasonable to expect that the retailer clearly outlines this information to the consumer.

- That any actual or potential conflicts of interest of the solar retailer relating to the sale or installation of the unit, or the creation of certificates for the unit, including any conflicts of interest in relation to persons or entities related to the solar retailer, have been:
  - (i) disclosed to the owner of the unit; and
  - (ii) managed appropriately.
- That the retailer is not the subject of a declaration by the Regulator that it is not able to make written statements.

This new requirement for a statement from the solar retailer would not apply to wind or hydro small generation units, which are less common.

Subregulation 20AC(5B) covers the rare situation where no solar retailer is involved and allows certificates to be created without the statement under subregulation 20AC(5A) under limited circumstances. This could be because a person who is an accredited installer could install a unit they have purchased on their own (direct from a wholesaler, for example). It could also cover a person who has independently sourced the components of the unit and then pays an accredited installer for the installation of those components. This is intended to be a rare situation and not a mechanism for solar retailers to avoid making statements required by subregulation 20AC(5A). The exemption from subregulation 20AC(5A) does not impact other requirements, such as the need to use an accredited installer.

## **Item [12] – At the end of regulation 20AC**

The item adds a number of new subsections to regulation 20AC to further define concepts now used in the regulation.

Subregulation 20AC(7) clarifies that the written statements to be made by the retailer and the installer must include information that is true, correct and complete.

Subregulation 20AC(8) clarifies that the statements must also not contain any information that is false or misleading, or omit information that by its absence would result in the information provided being misleading.

This is important to clarify that the purpose of the statements is to ensure the requirements referenced in those statements have occurred, and not just that the statement claims they are satisfied. This is relevant to, and supports, the application of the civil penalty in section 24B of the Act concerning false and misleading statements. It also provides greater clarity for the Regulator to refuse to validate STCs where false or misleading information is provided.

### *Approved eligible solar PV modules and inverters*

Subregulations 20AC(9) and (10) include new provisions relating to approved solar PV modules or inverters that are eligible for STCs under the SRES. In particular, an eligible solar PV module must comply with the relevant Australian standard – *AS/NZS 5033:2021, Installation and safety requirements for photovoltaic (PV) arrays* – that is in force at the time the module is installed (or the 2014 standard if installed before 19 May 2022 when the 2021 standard will replace the 2014 version). The Regulations already require inverters and modules to be listed on a list kept up to date by the Clean Energy Council (CEC), the Regulations build on this and allow for a different body to maintain the list should that be appropriate.

In addition, the solar PV module and inverter must:

- be included in the approved lists of modules and inverters maintained by the CEC or a body nominated by the Regulator;
- not be subject to a declaration by the Regulator that it is ineligible; and
  - not be subject to a recall notice under consumer law, or declaration by the Regulator that the module or inverter is ineligible.

The Australian Standard: *AS/NZS 5033:2021, Installation and safety requirements for photovoltaic (PV) arrays* and the 2014 version can be obtained from <https://www.standards.org.au/> for around \$250. It is a central resource for all installers and is part of their training. Therefore, those who need to refer to the standard would be expected as an industry participant to have access to it. The general public will not require a copy to ensure their compliance with the legislation because the onus for compliance with the standard is on the installer. It is important that relevant updates are incorporated to ensure that requirements under the Principal Regulations are not different to those under the accreditation schemes, electrical licensing requirements and for distribution network connection. They are incorporated consistently with section 160A of the Act.

The CEC lists of approved modules and inverters can be found at <https://www.cleanenergycouncil.org.au/industry/products> and are freely available. The process for changing this list is set out in regulation 20AE. It is important that the list

remains up to date with new products and so is incorporated as in force from time to time consistent with section 160A of the Act.

### **Item [13] – After regulation 20AC**

This item adds six new regulations to support the requirements in regulation 20AC.

#### *Provision of serial numbers*

Regulation 20AD details that for eligibility under the scheme, the serial numbers of solar PV modules and inverters are provided to the Regulator or a body nominated by the Regulator. This explains the conditions in subregulations 20AC(2B) and (2C). Serial numbers must be provided by the manufacturer of the components, or the importer of the components where they are not manufactured in Australia. The provision of serial numbers and storage and dissemination of serial numbers is intended as a key mechanism to support compliance with SRES eligibility requirements by linking the installation to components that are assured as meeting relevant Australian standards. If manufacturers or importers choose not to supply the serial numbers, the consequence is that those systems will not be eligible under the SRES.

The serial numbers themselves are not commercially sensitive and the ability to nominate another body allows for appropriate IT solutions to the serial number collection and distribution through smart apps to be investigated.

#### *Approved components*

Regulation 20AE relates to the nomination of a person to be responsible for publishing a list of approved solar PV modules and inverters that are eligible under the SRES. The Regulator is able to nominate a publisher of approved solar PV and inverter components. Otherwise, if no nomination was in effect, the CEC, which already maintains a register of those components, would continue to publish the approved list of components.

The item also outlines the process by which the Regulator can nominate a person to determine and publish details of eligible solar PV modules and inverters. In particular, in determining a body that may maintain a register of solar components, the Regulator must have regard to the efficiency, integrity and effectiveness of the proposed processes, including processes for testing and verifying components, as well as the capacity to keep the lists updated and the fees that they charge for approving modules and inverters.

Subregulation 20AE(3) ensures that the Regulator gives active consideration to nominating another body before 1 January 2023. This is to ensure that issue of the best possible body and process for component listing is explored thoroughly before any decision is made. The need for an appropriate transition to any new list would be considered in this process to ensure that a change to the body and list does not disadvantage those importing and installing products based on the current listing.

Subregulations 20AE(4) to (6) specify other matters that the Regulator must consider in deciding to nominate a body, that the Regulator must publish a notice before making a nomination and that a person who would be affected by the nomination has an opportunity to make submissions about the proposed nomination. The Regulator must then publish the details of a nominated person under subregulation (7).

Regulation 20AF provides the Regulator with the authority to declare a component ineligible in certain circumstances. To do this, the Regulator would need to have regard to:

- whether the component complied with the relevant Australian standard;
- whether its inclusion on the list of approved components was based on false information, and
- other matters such as whether the inclusion of the component created a risk for the integrity of the SRES or creation of STCs.

The Regulations provide that before the Regulator declares a component ineligible, the manufacturer or other affected persons may make a submission to the Regulator to outline their claims for why the component should not be declared ineligible.

However, if the component presented a known imminent safety risk, the process for making a submission would not apply and the Regulator would be able to declare the component ineligible immediately. In those situations, the Regulator would notify relevant authorities of issues with electrical safety of components it had become aware of. Ordinary procedural fairness obligations appropriate to the circumstance would still apply.

Any module or inverter that was declared ineligible would need to be published on the Regulator's website. Merits review of a decision to declare a component ineligible would be available. It is not intended that this power would be exercised frequently and that the body who maintains the list of approved modules and inverters would be delisting products that raised such concerns.

#### *Declaring an installer, designer or retailer ineligible*

Regulation 20AG enables the Regulator to declare an installer or designer ineligible. The intention remains that the installer accreditation schemes would continue to have their own mechanisms to enforce compliance with their requirements and suspend installers or designers who do not meet those requirements. The provision of false or misleading information, such as in relation to whether an installation was performed correctly or used the approved components, can already attract serious penalties under the Criminal Code and can be a civil penalty under s 24B of the Act. However, additional mechanisms are necessary to deal with installers and designers who are non-compliant, consistent with the current declaration mechanism in regulation 47 of the Regulations that has operated since 2010.

Regulation 20AG provides the Regulator with the power to declare that a designer or installer of a small generation unit was ineligible to continue designing or installing small generation units eligible under the SRES if there was evidence of three or more instances where the design or installation had breached requirements.

- In the case of a designer, a breach would involve an installation that did not comply with the requirements of the accreditation scheme or if false or misleading information was provided or information was omitted in written statements.
- In the case of an installer, the breaches would relate to false or misleading information or omission of information in written statements, breaches of compliance with the accreditation scheme, and material breaches of electrical safety requirements.

A declaration would remain in effect for up to 3 years, as specified in the declaration.

The provisions are intended to encourage compliance with the requirements to ensure installations are of a high quality, meet safety requirements and that relevant information on the installation and operation of the system has been provided to the consumer.

The provisions allow for flexibility where an installer has inadvertently made a genuine and one-off mistake, but the consequences of breaching these requirements are intended to act as a deterrent and to encourage installers to comply with the requirements in all installations. In determining whether or not to declare that a person is ineligible, the Regulator is able to consider the circumstances relating to the breach.

The Regulator must publish on its website any declarations of a person that is ineligible to install or design a small generation unit under the SRES. Merits review of a decision to declare an installer or designer ineligible would be available.

The declaration that an installer is ineligible is triggered by three instances of non-compliance after 1 January 2022, which is after the Regulations have been registered. This would ensure the new power does not have any retrospective effect, but is not delayed in its application to behaviour that would already be in breach of section 24B of the Act or other similar requirements. The solar retailer and designer provisions commence from 1 April 2022, when the new statements are required to be made.

Regulation 20AH provides the Regulator with the power to declare that a solar PV retailer was ineligible to make statements. This effectively means that the retailer would be unable to continue selling systems that were eligible under the SRES if there was evidence of three or more instances where the retailer had breached requirements. The Regulator's powers to declare a retailer ineligible under the SRES relate to the eligibility for support in the form of STCs and therefore, declaring a retailer ineligible would mean that systems sold by that retailer are not eligible for the benefit of STCs. It is not the intent of the regulation to prohibit the solar retailers operating outside of the scheme.

The requirements relate to the retailer's written statement, particularly false or misleading information or omission of information in written statements. The declaration would remain in effect for a period of up to 3 years as specified in the declaration.

In deciding whether to make a declaration that a designer, installer or retailer was ineligible, the Regulator would need to have regard to specific matters, including the materiality of the breaches of the accreditation requirements or false or misleading information that was provided, the extent of harm or loss caused, and whether the person had taken steps to rectify the breach.

The provisions are designed to give the Regulator the power to take action where there are recurring and deliberate instances of breaches or lack of due care and diligence. Persons to whom the declaration applied would be provided an opportunity to make a submission to the Regulator to outline their claims for why they should not be declared ineligible. Merits review of a decision to declare a retailer ineligible would be available.

Regulation 20AI details common considerations and process requirements for the declarations. This includes a 28 day period to make submissions on any proposed declaration. This helps ensure appropriate natural justice requirements are met before any decisions are made.



**Item [14] – Paragraph 39(c)**

This item replaces the existing requirement for the inspector to be satisfied that all State or Territory, and local, government requirements have been satisfied for the siting of the unit, attachment of the unit to a building or structure and grid connection of the unit, with the broader requirement to be satisfied that all local and State or Territory government requirements relating to the installation of the unit have been met. This ensures the inspection regime mirrors the changes to subregulation 20AC(4).

**Item [15] – Paragraph 39(e)**

This item adds a reference to subregulation 20AC(5A) to require the inspector to be satisfied that the condition for an additional written statement for units that are solar (photovoltaic) systems has been satisfied.

**Item [16] – Paragraph 39(f)**

This item replaces paragraph 39(f) with a requirement for the inspector to determine whether the documents, statements and evidence in subregulations 20AC(5) and (5A) relating to the unit contain false or misleading material, or an omission which is misleading in a material respect. Existing paragraph 39(f) refers to elements of regulations 20AC which are being amended.

**Item [17] – Regulation 39 (note)**

This item repeals the note in regulation 39 consequential upon the removal of existing paragraph 39(f).

**Item [18] – Subregulation 41(1)**

This item creates an additional ability for the inspector to notify any person, rather than just interested parties, of an imminent safety risk to a person or property from a small generation unit. This discretion ensures that anyone who may be impacted can be told of the relevant risks and act appropriately.

**Item [19] – Subregulation 41(5) (at the end of the definition of interested parties)**

This item expands the definition of ‘interested parties’ to include the owner of the small generation unit. While the occupier of the premises is currently required to be notified, they are not always the owner of the unit (such as where the occupier holds possession under a lease).

**Item [20] – Subregulation 43(1)**

This item repeals and replaces subregulation 43(1) which provides that: if the report is likely to contain an adverse finding in relation to a person who designed, installed or created certificates for the small generation unit, the inspector must provide a copy of the finding to that person before finalizing the report. This item specifies that an adverse finding against the person who sold the unit to the owner of the unit (i.e. the solar retailer), in addition to a

person who designed, installed or created certificates for the small generation unit, must be provided with a copy of an adverse finding relating to them before the report is finalised. This reflects the new solar retailer statement could be considered during an inspection and natural justice should be provided before the report is finalised.

### **Item [21] – Subregulation 47(3)**

This item removes the requirement in subregulation 47(3) that a declaration cannot have effect for a period of more than 12 months. It also inserts subregulation 47(3A), which imposes a period limit of 3 years if the three adverse findings relate to the inspector not being satisfied that a document, statement or evidence obtained by the person does not contain information that is false or misleading or omits detail which would make it misleading in a material way, or 12 months in any other case. This aligns the relevant periods with regulation 20AG.

### **Item [22] – Subregulation 49(1) (after table item 2AA)**

This item inserts additional items into table 2, so that the following decisions are reviewable by the Regulator:

- the decision under regulation 20AF to declare that a model of an inverter or photovoltaic module is ineligible for use in the installation of small generation units, if the request for review is made by the manufacturer of the model, or the person who imported the model into Australia;
- the decision under regulation 20AG to declare that a person is not eligible to design small generation units, if the request for review is made by the person subject to the declaration;
- the decision under regulation 20AG to declare that a person is ineligible to install small generation units, if the request for review is made by the person subject to the declaration; and
- the decision under regulation 20AH to declare that a person is ineligible to make statements relating to small generation units, if the request for review is made by the person subject to the declaration.

The applicant can also seek merits review in the Administrative Appeals Tribunal under subregulation 49(5) if they are still dissatisfied with the decision on reconsideration.

### **Item [23] – In the appropriate position in Part 9**

This item inserts a new regulation 53 at the end of Part 9, which ensures the amendments in Schedule 1 do not operate retrospectively or have retrospective effect.

Regulation 53 defines the small generation units to which the amendments in Schedule 1 apply. Amendments made by this Schedule apply to the creation of certificates in relation to small generation units installed on or after 1 April 2022. Paragraphs 39(e) and (f) apply to inspection of small generation units that were installed on or after 1 April 2022. This is relevant because certificates can be created up to 12 months after the installation of the unit. Accordingly, a unit installed on 31 March 2022 would use the Principal Regulations as they

existed prior to these Regulations to determine eligibility for STCs, even if the certificate was not created until March 2023.

## **SCHEDULE 2—Small generation units—designer and installer accreditation scheme**

This schedule implements recommendations from the Review in relation to giving the Regulator responsibility for setting the rules and framework for installer accreditation. Accreditation provides assurance to consumers of solar PV systems that designers and installers are appropriately trained and that installations comply with relevant requirements. The Regulations specify that the CEC is the body responsible for accrediting designers and installers. The measures enable the Regulator to approve an accreditation scheme.

The measures outline the process by which the Regulator could approve accreditation schemes for designers and installers of solar PV systems, and the circumstances under which it could revoke an approval for an accreditation scheme.

### **Item [1] - Paragraphs 20AC(2)(a) to (d)**

This item repeals and replaces paragraphs 20AC(2)(a) to (d). To be eligible to create STCs, a small generation unit must be installed by an accredited installer. The Regulations currently require designers and installers to be accredited by either the Australian Business Council for Sustainable Energy (ABCSE) or the CEC. However, the ABCSE has now folded, leaving CEC as the only supplier. The Review recommended that the Regulator set the rules and framework for designer and installer accreditation schemes.

This item no longer requires designer and installers to be accredited by either the ABCSE or the CEC. Instead, this item allows a small generation unit to be eligible for STCs if installed by a designer and installer accredited under any scheme approved by the Regulator.

### **Item [2] - At the end of Division 2.3 of Part 2**

This item adds a new subdivision to detail approved accreditation schemes for paragraphs 20AC(2)(a) to (d).

Subdivision 2.3.4 provides the framework, rules and processes by which:

- entities make applications for accreditation scheme approval to the Regulator;
- the Regulator accepts, reviews, approves and refuses applications for accreditation schemes;
- the Regulator notifies of a decision to approve or refuse an application; and
- the Regulator revokes approval of an accreditation scheme.

Regulation 20BB introduces the subdivision so that the process for approving an accreditation scheme is set out in subdivision 2.3.4.

Regulation 20BC clarifies that ‘scheme operator’ is defined in subparagraph 20BE(b)(iii). This regulation clarifies that a scheme operator would be assessed as fit and proper against matters set out in regulation 3L.

Subregulation 20BD(1) allows a person to apply for accreditation of a scheme designed for the purpose of meeting requirements laid out in paragraphs 20AC(2)(a) to (d).

Subregulation 20BD(2) ensures that applications for accreditation are made in a consistent, standard form. The subregulation requires that an application is made in the form specified by the Regulator on their website and that the application contains all documentation and

information required by the Regulator in order to make a proper assessment of the application. The subregulation also requires that an undertaking complying with subregulations 20BD(3) is included in the application and that all applications are made within a time period either specified by or agreed with the Regulator.

Subregulations 20BD(3) ensures that the scheme operators agree to notify the Regulator in writing when any matters arise that might impact or alter the scheme's integrity, fees, operation and/or reputation. Scheme operators will also be required to notify the Regulator and other approved scheme operators when they exclude a designer or installer from their scheme.

Subregulations 20BD(4) and (5) require that the Regulator specifies a three month time period, during which applications for accreditation scheme approval could be made, sometime between the 1 July 2022 and 31 March 2023. Accreditation under the CEC scheme would continue until a designer or installer was accredited under any new scheme approved by the Regulator, as outlined in the transitional provisions under in Item 6 below.

Regulation 20BE sets out the details that must be included in an accreditation scheme application. The applicant would be required to provide information including details of:

- the applicant;
- the proposed scheme operator;
- the scope of the proposed scheme;
- scheme management, operation, compliance monitoring, quality assurance;
- the training that will provided under the scheme (accompanied by evidence);
- compliance with the Act and the Regulations;
- insurance requirements and codes of conducts to be included in the scheme;
- processes that deal with conflicts of interest;
- scheme fees; and
- reasons why the proposed scheme should be approved.

Regulation 20BF allows the Regulator to request further information from the applicant and sets out the process the Regulator must follow. The regulation also ensures that an application is considered withdrawn if the information requested is not provided to the Regulator by a specified date.

Regulation 20BG requires the Regulator to make a decision by either approving or refusing a properly made application.

Subregulation 20BH(1) sets out the criteria a proposed accreditation scheme must meet before being approved by the Regulator. Criteria include:

- the scheme operator being a fit and proper person and having appropriate qualifications, expertise, capacity and resources to manage the scheme;
- the scheme operator and managers having appropriate expertise and knowledge of the SRES requirements under the Act and the Regulations;
- the scheme governance and conflict of interest arrangements being appropriate;
- the scheme including appropriate measures to ensure compliance and identify and address non-compliance with the Act and the Regulations; and

- the reasonableness of scheme fees.

The Regulator may also determine and publish guidelines on how proposed accreditation scheme applications should be made and assessed. This would provide scheme operators with detail on how the Regulator interprets the relevant requirements and expectations for what should be dealt with by the schemes. These guidelines are intended to be of an administrative nature, assisting the Regulator apply the relevant criteria in the Regulations.

Subregulation 20BI(1) specifies that a decision to approve or refuse an application is to be made by notifiable instrument as soon as practicable after the decision is made. It is appropriate that the decision is made by notifiable instrument because the decision is administrative rather than legislative in character, because it applies the law in respect of the application without determining any content of the law. Further, the broad impact that a decision to approve or reject a scheme application will have an impact across the industry and should therefore be publicly available.

Subregulations 20BI(2) to (4) clarify the process the Regulator must undertake to notify applicants of the outcome of their applications. This includes notifying applicants within 28 days of the Regulator's decision, and publishing details of any approved schemes on a publicly available website.

Regulation 20BJ provides that an approved scheme continues to be an approved scheme unless the Regulator revokes the approval based on set criteria in regulation 20BK.

Regulation 20BK sets out criteria that may lead to an approval being revoked. This decision is subject to merits review. It is intended that the Regulator would work with all approved schemes to bring them back into a state where they continue to meet the criteria rather than revoking the approval.

Regulation 20BL clarifies the process the Regulator must undertake to notify scheme operators and the public of decisions to revoke a scheme's approval. The Regulator would also need to allow the operator and the public time to respond to the notice, and consider any responses, before making a final decision to revoke approval. The Regulator must provide a period of at least 28 days from the notice being given for the operator or the public to respond to the proposed revocation. The Regulator must consider any response that is made in that time. Within 28 days after the end of the timeframe for responding, the Regulator must notify and publish details of its decision to revoke approval. If the Regulator has not notified or published its decision by 28 days after the response period ended, the approval is deemed to have been revoked. This is intended to provide certainty to industry as the proposal to revoke would be made public and should be addressed in a timely manner. However, it is intended that the Regulator would publish its decision on revoking approval of a scheme, which would be in the form of a notifiable instrument, which would avoid the deeming provision being called on. A notifiable instrument is used for this administrative decision to ensure it is appropriately publicised.

Regulation 20BM provides that once a scheme's approval has been revoked, any installers or designers accredited under that scheme will continue to be accredited until either 12 months after the scheme approval revocation date or the day the installers' or designers' accreditation ends (whichever is earliest). This is intended to allow time for such installers to transition to a new approved scheme.

Regulation 20BN allows a person to make an application to the Regulator for the approval of a proposed accreditation scheme for a specific type of small generation unit type, if there are no approved accreditation schemes for that small generation unit type. This would need to be done within a time period specified by the Regulator.

### **Item [3] – Regulation 45 (heading)**

This item amends the heading to clarify that it relates to any approved accreditation scheme operator and not just the CEC.

### **Item [4] – Regulation 45**

This item ensures inspection reports for small generation units are provided to the operator of the accreditation scheme which has accredited the designer and installer of the inspected unit.

### **Item [5] – Subregulation 49(1) (after table item 2AD)**

This item allows applicants seeking accreditation scheme approval and persons affected by an accreditation scheme revocation to request that the Regulator reconsiders their decision. The applicant can also seek merits review in the Administrative Appeals Tribunal under subregulation 49(5) if they are still dissatisfied with the decision on reconsideration.

### **Item [6] - In the appropriate position in Part 9**

This item clarifies that the amendments in Schedule 2 are not retrospective and ensures that there is no conflict with existing accreditation arrangements.

Existing accreditations provided under the CEC accreditation scheme would continue to be recognised if in force before 1 July 2022. Such an accreditation would be recognised until either 31 December 2022, or 3 months after the Regulator has approved an accreditation scheme under regulation 20BH, whichever is later.

Pending applications for accreditation under the CEC accreditation scheme would be able to be progressed to accreditation (if deemed eligible) until the Regulator has approved an accreditation scheme, as long as applications are either:

- made, with the accreditation not yet in force, before 1 July 2022, or
- made on or after 1 July 2022 and before the Regulator has approved an accreditation scheme under regulation 20BH.

Resulting accreditations would be recognised until either 31 December 2022, or three months after the Regulator has approved an accreditation scheme under regulation 20BH, whichever is later.

## **SCHEDULE 3—Solar water heaters**

This schedule includes minor amendments to enable the Regulator to update the Register of SWHs including to remove a device that poses a safety risk.

### **Item [1] - Regulation 19 (note)**

This item makes a minor correction, so that the note refers to the right subsection of the Act, namely subsection 21(2). Subsection 21(2) of the Act requires certificates related to a SWH to be created within 12 months of the SWH installation.

### **Item [2] - Subregulation 19C(3A)**

This item clarifies that the Regulator may remove a SWH from the Register if its certification expires or the device poses a safety risk. For a device that is found not to be a SWH or has an expired certification, the Regulator will be required to consult on the proposed removal and date of removal with the SWH manufacturer, and any person who requested a determination for the SWH under subregulation 19BC(1). In particular, the Regulator will be required to provide written notice of the proposed removal to the manufacturer and any person who made a request relating to the device under subregulation 19BC(1), and consider submissions made in response to the proposed removal before removing a device from the Register. Where there is a safety risk, the Regulator can act quickly, and is not required to give written notice under subregulation 19C(3B). However, this does not preclude limited consultation where appropriate.

### **Item [3] - Subregulation 49(1) (after table item 2)**

This item makes the Regulator's decision to remove a SWH from the Register a reviewable decision that can be reconsidered. The applicant can also seek merits review in the Administrative Appeals Tribunal under subregulation 49(5) if they are still dissatisfied with the decision on reconsideration.

### **Item [4] - In the appropriate position in Part 9**

This item clarifies that the amendments in items 2 and 3 would apply to all SWHs entered into the Register on or after 1 January 2022. It is important to ensure that all SWHs are appropriate to create certificates under the schemes, regardless of when they were first eligible. Taking a SWH off the Register would not impact certificates already created or the future creation of certificates if the model was included in the Register at the time of installation.



## **SCHEDULE 4—Other amendments**

This schedule contains minor amendments to improve and clarify aspects of the operation of the RET scheme, including to:

- enable the Regulator to suspend the accreditation of a renewable energy power station where the power station has been decommissioned or no longer seeks to be accredited.
- streamline aspects of the Regulator’s role in issuing exemptions under the RET for electricity used in EITE activities;
- clarify what is required to be submitted to the Regulator by participants that apply for EITE exemptions; and
- correct references to energy market operators that are outdated.

### **Part 1—Suspending accreditation of a power station**

#### **Item [1] – Regulation 20D**

This item amends the subsection numbering to accommodate the inclusion of item 2 below.

#### **Item [2] - At the end of regulation 20D**

This item allows a nominated person to apply for a suspension of the accreditation of a power station, and allows the Regulator to respond by suspending the power station. This item also allows the Regulator to suspend the accreditation of a power station that has been decommissioned and is no longer operating and generating electricity and suspend the accreditation of a power station if the nominated person is suspended under section 30 or 30A of the Act where the suspension relates to the power station.

This item also outlines how an application for suspension needs to be made to the Regulator, and requires the application to provide a reason for the proposed suspension, specify the period of the suspension and be accompanied by a written statement from any other stakeholder indicating the stakeholder’s or stakeholders’ agreement with the application being made.

### **Part 2—Exemption certificates**

#### **Item [3] - Regulation 22D**

This item removes the reference to paragraph (b) in the EITE activity definition in the Act, which no longer exists.

#### **Item [4] - Subregulation 22E(1)**

This item clarifies how this subregulation relates to paragraph 38C(1)(c) of the Act.

### **Item [5] - Subregulation 22E(2)**

This item gives the Regulator an additional 14 days to publish details of exemption certificates. This item also amends the details the Regulator must publish, by requiring information about the State or Territory in which the site is located to be included. This increases the usefulness of the published information.

### **Item [6] - Subregulation 22E(3)**

This item clarifies how this subregulation relates to subsection 38C(2) of the Act.

### **Item [7] - Regulation 22LA**

This item amends the subsection numbering to accommodate the inclusion of item 10 below.

### **Item [8] - Paragraph 22LA(e)**

This item allows a contracting person, who is party to a contract with a new liable entity, to apply to be the prescribed person for a particular year, site and EITE activity. This ensures that regulation 22LA is not unnecessarily limited when a different entity is party to the contract for supply of electricity.

### **Item [9] - Regulation 22LA**

This item allows a contracting person, who is party to a contract with a new liable entity and applies for an exemption certificate with consent from a prescribed person, to be named the prescribed person for a particular year, site and EITE activity.

### **Item [10] - At the end of regulation 22LA**

This item clarifies the requirements that need to be fulfilled before a contracting person can be named the prescribed person for a particular year, site and EITE. The contracting person needs to be party to a contract with a new liable entity, have consent from a prescribed person to apply and must make an application to the Regulator.

### **Item [11] - At the end of paragraph 22O(1)(h)**

This item requires exemption certificate applicants to provide the identifying information for all meters with a National Metering Identifier at the site of the EITE activity, not just for those meters supplying the data used to estimate the amount or volume of the EITE activity product in the exemption application. This can be relevant to verifying the electricity use amount for a site.

### **Item [12] - Regulations 22Q and 22R**

This item repeals regulations 22Q and 22R, removing certain requirements for information to be included in applications for an exemption certificate in relation to an activity and a site, and application for a significant expansion to a site. These concepts and information are only relevant to the production method for exemptions which is no longer in use.

**Item [13] - Subregulation 22S(3)**

This item clarifies that the prescribed person is as defined under regulation 22LA.

**Item [14] - After paragraph 22S(3)(c)**

This item requires a contracting person, who is making an exemption certificate application, to prove that they have consent from a prescribed person to do so.

**Item [15] - Subregulation 22UG(1) (heading)**

This item changes the heading of subregulation (1) to reflect that it applies to the first time use of an electricity method for a particular site, not an applicant's first time use of an electricity method.

**Item [16] - Paragraph 22UG(1)(a)**

This item removes the reference to the applicant and ensures that an audit report is only required when an electricity method is used for the first time at the site. This acknowledges the possibility of a change of ownership of a site and avoids unnecessary audits in this circumstance.

**Item [17] - Subregulation 22UG(2) (heading)**

This item amends the heading of subregulation (2) to reflect the change in item 18 reducing the frequency of the requirement to provide an audit report with an exemption certificate application from every 3 years to every 5 years.

**Item [18] - Paragraph 22UG(2)(a)**

This item reduces the administrative and cost burden of acquiring an audit report, by changing the frequency of the requirement to provide an audit report from every 3 years to every 5 years.

**Item [19] - At the end of paragraph 22ZHC(2)(b)**

This item allows certified exemption amounts published on exemption certificates issued for the preceding 3 years to be adjusted if errors in metering data have since been identified. This is an extension of the current allowance to adjust exemption amounts on certificates issued only for the previous year.

**Item [20] - Subregulation 22ZL(3)**

This item provides that the period within which the Regulator must issue exemption certificates is 60 business days, not 60 calendar days. The additional time is considered necessary to consider complexities with the electricity use method for some applicants.

**Item [21] - At the end of subregulation 22ZN(2)**

This item limits what exemption certificates can be amended upon request, based on age. A certificate should not be able to be amended more 5 years after the start of the year for which certificate was issued. This is intended to provide flexibility to enable EITE entities to have their exemption certificates amended within a limited timeframe given the increasing complexity of adjusting liability after a compliance year has passed.

**Item [22] - Paragraph 22ZPA(a)**

This item clarifies that the exemption certificate relates to a specific entity, activity and site.

**Item [23] - Paragraph 22ZPA(a)**

This item removes the unnecessary reference to the exemption application made by a prescribed person. All exemption certificates are issued in response to an exemption application, so this does not need to be referenced in this paragraph.

**Item [24] - Paragraph 22ZPA(b)**

This item clarifies that the Regulator may amend the first certificate under regulation 22ZPA if a person who is not currently a prescribed person becomes a prescribed person.

**Item [25] - Paragraph 22ZPA(c)**

This item clarifies that the application must relate to a specified activity, site, year and entity, not just a specified year and entity.

**Item [26] - Paragraph 22ZPA(d)**

This item allows evidence provided by a contracting person as part of their exemption application to be considered by the Regulator in issuing a second certificate.

**Item [27] - Paragraph 22ZS(1)(b)**

This item extends the time period during which the Regulator must identify an inaccuracy on an exemption certificate if they wish to amend the certificate. The time will be extended from during the year to which the certificate relates, to before 1 February in the year following the year to which the certificate relates. This is necessary because information from the electricity use method is not provided until January after the year has ended and this has brought issues with the certificate to the attention of the Regulator.

**Part 3—Northern Territory Electricity System and Market Operator**

The concept of an acquisition of electricity in Part 3 of the Act has a special role for electricity acquired by market operators, being the Australian Energy Market Operator (AEMO) or persons or bodies prescribed by regulation. In the Northern Territory (NT) there

is now a market operator which needs to be prescribed for consistent treatment across the Commonwealth of acquisitions. In addition, the role of the Independent Market Operator (IMO), which is currently specified in the regulations, has been taken over by AEMO and so IMO no longer needs to be specified in the regulations. Accordingly, the amendments replace all references to IMO with the NT market operator. The NT market body is legally specified as being the NT Electricity System and Market Operator (NTESMO), with the NT Power and Water Corporation currently acting in this role.

**Item [28] - Subregulation 3(1) (definition of IMO)**

This item removes the definition of IMO. The IMO is no longer referred to in the regulations and so a definition is no longer be needed.

**Item [29] - Subregulation 3(1)**

This item gives ‘National Electricity (NT) Rules’ the same meaning as that given in the *National Electricity (Northern Territory) (National Uniform Legislation) Act 2015* (NT).

This item also gives ‘NTESMO’ the same meaning as that given in the National Electricity (NT) Rules. Legislation for the NT can be found at: <https://legislation.nt.gov.au/>.

**Item [30] - Regulation 21A**

This item removes the IMO as a prescribed body and replaces it with NTESMO as a prescribed body.

**Item [31] - Paragraph 21(1)(a)**

This item removes the reference to IMO and replaces it with a reference to NTESMO.

This allows metering data used for NTESMO settlement statements to be used when calculating the amount of electricity acquired under a relevant acquisition.

**Item [32] - Subparagraph 21(1)(b)(i)**

This item removes the reference to IMO and replaces it with a reference to NTESMO. This allows NTESMO equivalent settlement data to be used when calculating the amount of electricity acquired under a relevant acquisition.

**Item [33] - Paragraphs 24(1)(i), 25(1)(d) and 25A(1)(d)**

This item removes references to IMO and replaces them with references to NTESMO. This clarifies that data issued by NTESMO could be used in annual energy acquisition statements, annual large-scale generation shortfall statements and annual small-scale technology shortfall statements.

## **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 Renewable Energy Scheme Reforms and Other Measures) Regulations 2021*

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 Renewable Energy Scheme Reforms and Other Measures) Regulations 2021* (the Regulations) amends the *Renewable Energy (Electricity) Regulations 2001* to implement reforms to the Small-scale Renewable Energy Scheme (SRES) as part of the Government's response to the *Integrity Review of the Rooftop Solar PV Sector* (the Integrity Review).

The SRES provides a financial incentive in the form of Small-scale Technology Certificates (STCs) for households and businesses to install small-scale renewable energy systems. System owners typically assign the right to create STCs to a registered agent in return for a discount on the system and installation cost.

The Regulations implement recommendations from the Integrity Review, including:

- giving the Clean Energy Regulator (the Regulator) responsibility for setting the rules and framework for installer accreditation for the listing of approved solar photovoltaic (PV) components;
- implementing new reporting requirements for installers, solar retailers and manufacturers; and
- giving the Regulator more effective powers to monitor and enforce compliance.

To manage the potential risks around STC entitlements, the Regulations requires a number of eligibility requirements to be met in order for STCs for a small generation unit to be created. This includes the requirement for written statements by the designer and installer of the unit which provide certain information, including the name of the designer or installer (whichever is applicable). The unit and its installation must also meet design and installation conditions, including the condition that STCs may not be created for an installation of a solar PV system unless the installer or supervisor of the installer is an eligible accredited installer, and the serial numbers for the solar PV module and inverter components have been provided in accordance with the requirements in regulation 20AD.

Further, STCs cannot be created for a small generation unit if the installer or designer of the unit was declared ineligible by the Regulator. The Regulations allows the Regulator to declare installers and designers ineligible to design small generation units, install small generation units and make certain statements in relation to small generation units.

The Regulations also contain other minor amendments to improve and clarify specific matters relating to the administration and operation of the Renewable Energy Target (RET) scheme. These relate to SWHs, suspensions of registration, exemptions for emissions-intensive trade-exposed activities, the Northern Territory market operator and correcting minor errors in the Regulations.

### **Human rights implications**

The Regulations may engage the following rights:

- the right to privacy – Article 17 of the International Covenant on Civil and Political Rights (ICCPR);
- the right to reputation – Article 17 of the ICCPR; and
- the right to a fair trial – Article 14 of the ICCPR.

These human rights will only be implicated to the extent that the Regulations affects an individual, for example because it impacts the installer of a small generation unit who is a natural person. Other entities impacted by the Regulations, such as solar retailers, are generally corporate entities which do not have human rights as individuals do.

### **The right to privacy – Article 17 of the ICCPR**

The Regulations may engage the right to the protection against arbitrary interference with privacy, protected in Article 17 of the ICCPR, which 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.

The Regulations require collection and use of information, which may include personal information. For example, in order for a person to be eligible for STCs for a small generation unit, the installer must make a statement to the person eligible to create STCs in relation to the installation which includes information such as the name of the designer or installer, accreditation details of the designer or installer and confirmation that the designer or installer complied with relevant requirements.

Part 3 of the *Clean Energy Regulator Act 2011* provides a range of protections for information that is obtained by officials of the 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 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 *Clean Energy Regulator Act 2011* 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 Regulator is not obliged to disclose information to any of the listed or prescribed bodies and the Chair of the 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 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.

Personal information collected is also subject to the *Privacy Act 1988* and information about the Regulator's privacy policies is available on its website.

Insofar as the Regulations interfere with the privacy of individuals, the interference is reasonable, necessary and proportionate to the ends sought. While collection of personal information limits the right to privacy, the Regulations are not considered incompatible with this right because the information to be collected is necessary for the identification of unit owners and installers under the scheme, and therefore the regulation and integrity of the scheme.

### **The right to reputation – Article 17 of the ICCPR**

Article 17 of the ICCPR prohibits unlawful attacks on a person's reputation and provides that persons have the right to the protection of the law against such interference or attacks.

The Regulations may, to a limited extent, impact a person's reputation because they require the Regulator to publish declarations of ineligibility on the Regulator's website. However, any interference with a person's reputation would not be unlawful or arbitrary, as publishing declarations provides transparency over the regulation of the scheme. The Regulations do not impact individuals' ability to provide certain services in the course of their business, but instead publicise information about the person's ability to make statements necessary to obtain a STC. For example, a person subject to a declaration could still carry out work as part of an installation, so long as an accredited installer was also present to make the necessary statements under the scheme. Therefore, any limitation on the right to reputation imposed by the Regulations is reasonable, necessary and proportionate.

### **The right to a fair trial – Article 14 of the ICCPR**

The right to a fair trial applies to both criminal and civil proceedings and to cases before both courts and tribunals. The right is concerned with procedural fairness and encompasses notions of equality in proceedings, the right to a public hearing and the requirement that hearings are conducted by an independent and impartial body.

The Regulations give the Regulator the power to declare models of inverters or photovoltaic modules ineligible and to declare persons ineligible to design or install small generation units or to make solar retailer statements. This would not curtail the right to a fair trial because before making a declaration in relation to a person, the Regulator must give the person written notice of the proposed declaration and the person may make written submissions which must be considered by the Regulator. Further, the Regulator's decisions are reviewable decisions that can be reconsidered and may be subject to merits review in the Administrative Appeals Tribunal.



## **Conclusion**

The Regulations are compatible with human rights because, to the extent that it may limit those rights, that limitation is reasonable, necessary and proportionate.

**The Hon Chris Bowen MP**  
**Minister for Climate Change and Energy**