

EXPLANATORY STATEMENT

Issued by Authority of the Minister for Climate Change and Energy

Renewable Energy (Electricity) Regulations 2001

Renewable Energy (Electricity) Amendment (Native Forest Wood Waste) Regulations 2022

Legislative Authority

Section 161 of the *Renewable Energy (Electricity) Act 2000* (the Act) provides, in part, that the Governor-General may make regulations prescribing all matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

Subsection 17(1) of the Act lists eligible renewable energy sources, including wood waste (paragraph (j)). Subsection 17(3) provides that an energy source referred to in subsection 17(1) has the meaning prescribed by the regulations.

Regulation 8 of the *Renewable Energy (Electricity) Regulations 2001* (the Principal Regulations) provides the meaning of wood waste.

Purpose

The purpose of the *Renewable Energy (Electricity) Amendment Regulations 2022* (the Amendment Regulations) is to exclude biomass from a native forest from the meaning of wood waste for the purposes of the Act. This amendment would ensure that Large-scale Generation Certificates (LGCs) can no longer be created in relation to electricity generated from native forest biomass.

Transitional provisions would provide for certain power stations to continue to have the ability to create LGCs from native forest biomass. The transitional provisions would only apply to those power stations that were first accredited under the Act to create LGCs from wood waste during the period between:

- the commencement of the regulations which amended the meaning of wood waste to include native forest biomass on 27 June 2015, and
- the commencement of these amendment Regulations.

Background and Consultation

The Senate Standing Committee on Environment and Communications (the Committee) tabled the report of the Inquiry into the *Climate Change Bill 2022* and the *Climate Change (Consequential Amendments) Bill 2022* (the Inquiry) in the Senate on 31 August 2022.

During the Inquiry, stakeholders provided submissions expressing long standing concerns regarding the eligibility of electricity generated from native forest biomass for support through the Renewable Energy Target (RET), and advocated for the Bills to be amended to make electricity generated from native forest biomass ineligible.

The Committee recommended that the Government, subsequent to the passage of the bills,

undertake further consultation on possible legislative amendments and appropriate policy responses, including reviewing the use of native forest biomass for renewable energy in the RET. The Government agreed to the Committee's recommendation and conducted a public consultation, seeking submissions on issues related to the eligibility of native forest biomass in the RET. Submissions responding to a consultation paper were accepted from 30 September to 21 October 2022. Over 2,900 submissions were received and considered in the decision-making process.

The Government considered the outcomes of this consultation and has made a decision to amend the Principal Regulations to exclude native forest biomass from the RET. In addition to this, the department also consulted with the Clean Energy Regulator and the Department of Agriculture, Fisheries and Forestry on these amendments.

The regulatory impacts of this change have been certified as minor by the Office of Best Practice Regulation. A Regulation Impact Statement is not required (OBPR22-03453).

Impact and Effect

The Amendment Regulations change the meaning of wood waste for the purposes of the Act to ensure that biomass from a native forest is no longer considered wood waste. This amendment removes the ability for power stations utilising native forest biomass (subject to relevant conditions in subregulation 8(2)) as an energy source to seek accreditation under the RET and create LGCs. This amendment does not affect the existing scope or application of any of the other wood waste definitions set out in subregulation 8(1).

Given many stakeholders have long-held concerns about the ecological sustainability and emissions impact of electricity generated from native forest biomass and the role of the RET in providing an incentive for this generation, the regulations are expected to increase public confidence that electricity generated through the RET is ecologically sustainable and contributes to reducing emissions in Australia, consistent with the objectives of the Act.

Power stations that were first accredited to create LGCs from wood waste between 27 June 2015 (when the Principal Regulations were amended to include biomass from a native forest in the meaning of wood waste), and the commencement of the amendment regulations, will continue to have the right to create LGCs from native forest biomass in future, consistent with the previous regulations. The Clean Energy Regulator has advised that there is only one power station that was first accredited to use wood waste during the relevant period.

The Amendment Regulations also remove conditions in subregulations 8(2) to 8(4) for native forest biomass to be an eligible renewable energy source, as those conditions become redundant upon the removal of native forest biomass from the meaning of wood waste.

Details/Operation

The Amendment Regulations are a legislative instrument and commence the day after they are registered.

Details of the instrument are set out in [Attachment A](#).

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

Details of the Renewable Energy (Electricity) Amendment (Native Forest Wood Waste) Regulations 2022

Section 1 – Name

This section provides that the name of the instrument is the *Renewable Energy (Electricity) Amendment (Native Forest Wood Waste) Regulations 2022*.

Section 2 – Commencement

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

Section 3 – Authority

This section provides that the instrument is made under the *Renewable Energy (Electricity) Act 2000*.

Section 4 – Schedules

This section provides that the instrument is amended as set out in Schedule 1 – Amendments.

Schedule 1 – Amendments

Item 1 – subregulation 8(1)

This item omits the reference “For” from subregulation 8(1) and substitutes “For the purposes of” for clarity.

Item 2 – paragraph 8(1)(d)

This item omits and substitutes punctuation in paragraph 8(1)(d) to account for the repeal of paragraph 8(1)(e) (item 3 refers).

Item 3 – paragraph 8(1)(e)

This item repeals the paragraph. Accordingly, biomass from a native forest is no longer listed in the meaning of wood waste and therefore such biomass is not considered an eligible renewable energy source for the purposes of the Act.

Item 4 – subregulations 8(2), (3) and (4)

This item repeals the subregulations. The subregulations listed conditions for the eligibility of biomass from a native forest and these conditions are redundant following the repeal of paragraph 8(1)(e).

Item 5 – in the appropriate position in Part 9

This item inserts transitional provisions into the Principal Regulations to ensure that any accredited power station which was first accredited under the Act to use wood waste as an eligible energy source between 27 June 2015 and the commencement of the Amendment Regulations, will continue to be accredited to use native forest biomass in accordance with the previous regulations. This provision will ensure that the rights of those power stations that have acted and invested in accordance with the regulations are grandfathered.

Statement of Compatibility with Human Rights

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

**Renewable Energy (Electricity) Amendment (Native Forest Wood Waste) Regulations
2022**

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

The instrument seeks to amend the *Renewable Energy (Electricity) Regulations 2001* to remove biomass from a native forest from the meaning of wood waste, for the purposes of the *Renewable Energy (Electricity) Act 2000*.

Under the Act, accredited power stations can create tradeable large-scale generation certificates (LGCs) for eligible electricity they generate. LGCs are surrendered to the Clean Energy Regulator to avoid or reduce the amount of renewable energy shortfall charge that liable entities who acquire electricity are required to pay. Liable entities generally acquire LGCs by purchasing them, which creates an incentive for investment in power stations using eligible renewable energy sources.

One of the conditions for eligibility for accreditation, and for the creation of LGCs, is for the electricity to be generated from an eligible renewable energy source.

Section 8 of the Principal Regulations sets out the meaning of wood waste, an eligible renewable energy source, as including biomass from a native forest. The proposed Regulations seek to remove this definition from the Principal Regulations.

The Amendment Regulations also provide for power stations that were first accredited to use wood waste between 27 June 2015 and the commencement of the amended regulations to continue to do so in future, in accordance with the previous regulations.

Human rights implications

This Legislative Instrument does not engage any of the applicable rights or freedoms.

Conclusion

This Legislative Instrument is compatible with human rights as it does not raise any human rights issues.

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