

EXPLANATORY STATEMENT

Issued by authority of the Minister for Climate Change and Energy

Renewable Energy (Electricity) Amendment (Percentages) Regulations 2023

The *Renewable Energy (Electricity) Act 2000* (the Act) provides the framework for the large-scale renewable energy target (LRET) and small-scale renewable energy scheme (SRES). An objective of the Act is to encourage the additional generation of electricity from renewable sources.

Under the Act, large-scale generation certificates (LGCs) and small-scale technology certificates (STCs) may be created for energy generated or displaced by eligible renewable energy systems. The Act requires wholesale purchasers of electricity ('liable entities') to surrender a given number each of LGCs and STCs to the Clean Energy Regulator (CER) each year. These two numbers are determined by multiplying the renewable power percentage (RPP) and the small-scale technology percentage (STP), respectively, by a liable entity's electricity acquisitions for that year.

Section 161 of the Act provides 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 39(1) of the Act provides that the RPP for a given year is the percentage specified in the *Renewable Energy (Electricity) Regulations 2001* (the Principal Regulations) on or before 31 March in that year. Similarly, subsection 40A(1) of the Act provides that the STP for a given year is the percentage prescribed in the Principal Regulations on or before 31 March in that year.

The purpose of the *Renewable Energy (Electricity) Amendment (Percentages) Regulations 2023* (the Regulations) is to amend the Principal Regulations to specify the RPP for 2023 and to prescribe the STP for 2023.

Subsection 39(3) of the Act provides that before the Governor-General makes a regulation to specify the RPP, the Minister must take into consideration:

- (a) the required GWh of renewable source electricity for the year; and
- (b) the amount estimated as the amount of electricity that will be acquired under relevant acquisitions during the year; and
- (c) the amount by which the required GWhs of renewable source electricity for all previous years has exceeded, or has been exceeded by, the amount of renewable source electricity required under the scheme in those years; and
- (d) the amount estimated as the amount of all exemptions that will be claimed for the year.

Subsection 40A(3) of the Act prescribes that before the Governor-General makes a regulation specifying the STP for a year (the current year), the Minister must take into consideration:

- (a) the estimated value, in MWh, of small-scale technology certificates that will be created in the current year under Subdivisions B and BA of Division 4 of Part 2; and
- (b) the amount estimated as the amount of electricity that will be acquired under relevant acquisitions during the current year; and
- (c) the amount estimated as the amount of all exemptions that will be claimed for the current year; and

- (d) if the current year is the year commencing on 1 January 2012 or a later year:
- (i) the amount by which the previous year's estimate under paragraph (a) exceeded, or was exceeded by, the value, in MWh, of small-scale technology certificates that were created in that year under Subdivisions B and BA of Division 4 of Part 2; and
 - (ii) the amount by which the previous year's estimate under paragraph (b) exceeded, or was exceeded by, the amount of electricity that was acquired under relevant acquisitions during that year; and
 - (iii) the amount by which the previous year's estimate under paragraph (c) exceeded, or was exceeded by, the amount of exemptions that were claimed for the previous year.

Each year, the RPP and STP are calculated using standard formulas that account for the considerations set out in subsections 39(3) and 40A(3) of the Act. These formulas are published on the CER's website. The amendments are minor and machinery in nature as they do not substantially alter the existing legislative arrangements of the Act and the Principal Regulations. Consequently public consultation was not conducted.

The Office of Best Practice Regulation (OBPR) has advised that a Regulatory Impact Statement is not required (OBPR Reference 20056).

Details of the Regulations are set out in Attachment D(i).

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

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

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*. A Statement of Compatibility with Human Rights was completed (Attachment D(ii)).

Details of the Renewable Energy (Electricity) Amendment (Percentages) Regulations 2023

Section 1 - Name of Regulations

This section states that the title of the Regulations is the *Renewable Energy (Electricity) Amendment (Percentages) Regulations 2023*.

Section 2 - Commencement

This section states that the Regulations will commence the day after the instrument is registered.

Section 3 - Authority

This section states that the Regulations are made under the *Renewable Energy (Electricity) Act 2000*.

Section 4 - Schedule(s)

This section states that each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

Schedule 1 - Amendments

Item 1 – regulation 23

Regulation 23 specifies that the RPP for 2023 is 18.96 per cent, increasing from 18.64 per cent in 2022.

The RPP has been calculated from LRET data held by the CER using a standard formula that accounts for the considerations set out in subsection 39(3) of the Act. It is calculated to create LGC demand equal to the required amount of renewable source electricity (as set by section 40 of the Act) for the given year. The formula is published on the CER's website.

The 2023 and 2022 RPP are similar as they have the same target, and other inputs such as the total electricity acquired by liable entities and the total exemptions for emissions intensive trade exposure activities, vary slightly from year to year. The target is 33,000 GWh from 2021 to 2030, when the LRET ends.

Item 2 - regulation 23A

Regulation 23A specifies that the STP for 2023 is 16.29 per cent, decreasing from 27.26 per cent in 2022.

The STP has been calculated from SRES data held by the CER and from consultants' projections, using a standard formula.

The formula accounts for the considerations set out in subsection 40A(3) of the Act.

As outlined in the explanatory memorandum to the Renewable Energy (Electricity) Amendment Bill 2010, the STP is calculated to ensure that over time all STCs will be required to be surrendered. The formula is published on the CER's website.

The calculated decrease for 2023 is due to lower-than-expected 2022 certificate creations and consultants' projections for 2023 STC creations predicting this reduction to continue into 2023. This decrease is largely due to a drop in rooftop solar installations and a reduction in the deeming period for STC creations.

Statement of Compatibility with Human Rights

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

Renewable Energy (Electricity) Amendment (Percentages) Regulations 2023

This Disallowable Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Legislative Instrument

The amendment to the *Renewable Energy (Electricity) Regulations 2001* (the Regulations) is required to set the Renewable Power Percentage (RPP) and the Small-scale Technology Percentage (STP) for 2023. The 2023 RPP is 18.96 per cent, which has increased from 18.64 per cent for 2022. The 2023 STP is 16.29 per cent, which has decreased from 27.26 per cent for 2022.

The RPP sets the rate of liability for the given compliance year under the Large-scale Renewable Energy Target (LRET). The STP sets the rate of liability for the given compliance year under the Small-scale Renewable Energy Scheme (SRES). The Regulations prescribing the RPP and STP must be made on or before 31 March each year or the percentages will be calculated in accordance with a statutory formula.

The setting of the RPP and STP is considered minor and machinery as the percentages are an administrative requirement under section 39 and section 40A of the *Renewable Energy (Electricity) Act 2000* (the Act) respectively, to achieve the objectives of the Act which is to encourage the additional generation of electricity from renewable sources. The Act requires entities that make relevant acquisitions of electricity to surrender certificates created from accredited renewable energy power stations. The Act also requires entities that make relevant acquisitions of electricity to surrender certificates created by entities, individuals or companies from small unit installations, namely solar water heaters and small photovoltaic (solar), wind and hydro generation systems.

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.