

EXPLANATORY STATEMENT

Issued by authority of the Minister for Climate Change and Energy

Renewable Energy (Electricity) Act 2000

Renewable Energy (Electricity) Amendment (Exemptions and Other Measures) Regulations 2024

Legislative Authority

The Renewable Energy Target scheme (RET) is established by the *Renewable Energy (Electricity) Act 2000* (the Act) and is supported by the *Renewable Energy (Electricity) Regulations 2001* (the Regulations).

Section 161 of the Act provides 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.

Division 1A of Part 4 and Division 1A of Part 5 of the Act provide the legislative framework for the provision of exemptions from RET liability, while Part 3A and Schedule 6 of the Regulations prescribe the eligible activities and processes for applying for, issuing and amending exemptions, including the methodology for calculating the amounts of these exemptions.

Background

The *Renewable Energy (Electricity) Amendment (Exemptions and Other Measures) Regulations 2024* ('Amendment Regulations') amend the *Renewable Energy (Electricity) Regulations 2001* ('Principal Regulations') to update the activities prescribed in Schedule 6 relating to the steel and hydrogen industries to support eligibility for an emissions-intensive trade-exposed (EITE) exemption under the *Renewable Energy (Electricity) Act 2000* (the Act).

The Amendment Regulations also contain other minor amendments to allow an EITE application under the Act in respect of the revised integrated iron and steel activity to be able to be made before the end of 2024. The RET scheme supports investment in renewable energy by establishing a market for renewable energy certificates. Renewable energy power stations and owners of small-scale renewable energy systems create certificates for renewable electricity they produce. Liable entities (mainly electricity retailers) are required to surrender to the Clean Energy Regulator a specified number of renewable energy certificates for the electricity they acquire each year, or pay a shortfall charge.

Under section 46A of the Act, a liable entity may apply for exemption certificates in relation to electricity consumed by facilities that undertake eligible EITE activities.

Under section 5 of the Act, an EITE activity is an activity prescribed by the Principal Regulations. EITE activities that are eligible for exemption are provided in Schedule 6, Parts 2-54 of the Principal Regulations.

Purpose

The first purpose of the Amendment Regulations is to update the description of the integrated iron and steel manufacturing EITE activity to provide that the activity may or may not include the production of coke oven coke. This amendment provides greater flexibility to accommodate changes in production processes over time and allow relevant entities to continue to apply for an exemption under the Act.

The second purpose of the Amendment Regulations is to include the production of hydrogen using electrolysis as a stand-alone EITE activity in the Principal Regulations. This amendment allows renewable hydrogen production to be eligible for an exemption under the Act. The amendment supports the emerging renewable hydrogen industry by helping to reduce costs and improve competitiveness in the industry. The production of hydrogen is incorporated in other EITE activities but this amendment prescribes a new activity that could be undertaken on a stand-alone basis or combined with other eligible EITE activities.

Consultation

The Department of Climate Change, Energy, the Environment and Water invited stakeholders to review and provide feedback on an exposure draft of the Amendment Regulations.

Stakeholders were supportive of the proposed amendments and minor adjustments were incorporated in finalising the regulations to reflect the feedback during the consultation process. The Department considered the expert guidance and made appropriate adjustments to the Amendment Regulations to ensure the description of the EITE activities more broadly reflects industry practice.

Impact and Effect

The Amendment Regulations amend the Principal Regulations to expand the definition of integrated iron and steel manufacturing by making the production of coke oven coke optional. This amendment ensures that steel manufacturing facilities that cease production of coke oven coke as part of the production of integrated iron and steel manufacturing remain eligible for an EITE exemption under the Act.

The Amendment Regulations amend the Principal Regulations to include the production of hydrogen using electrolysis as a new stand-alone EITE activity. This amendment enables renewable hydrogen production to be exempt from RET liability for electricity used in the production process, which supports the development of the renewable hydrogen industry in Australia.

Details and operation

The Office of Impact Analysis has advised that an Impact Analysis is not required for these regulations (**OIA24-08672**).

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 Principal Regulations are exempt from sunset provisions, in accordance with *Legislation (Exemptions and Other Matters) Regulation 2015*, Regulation 12, Item 56A. Accordingly, the Regulations will not be automatically repealed after a set amount of time under the *Legislation Act 2003*. This is appropriate because the instrument deals with technical and scientific processes that prescribe electricity generation and consumption, which do not change on a regular basis.

Details of the Regulations are set out in Attachment A.

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 B).

Details of the Renewable Energy (Electricity) Amendment (Exemptions and Other Measures) Regulations 2024

Section 1 - Name of Regulations

This section states that the title of the Regulations is the *Renewable Energy (Electricity) Amendment (Exemptions and Other Measures) Regulations 2024*.

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 *Renewable Energy (Electricity) Amendment (Exemptions and Other Measures) Regulations 2024* 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] – Subregulation 22XA(2A)

This item repeals and substitutes Subregulation 22XA(2A) to provide that an application for an exemption certificate made by a prescribed person in regulation 22G, 22H, 22I, 22J or 22K for 2024 must be lodged on or before 31 December 2024, allowing an emissions-intensive trade-exposed (*EITE*) application in respect of the integrated iron and steel activity under regulation 656 to be able to be made before the end of 2024.

Item [2] – Subregulation 22ZB(4B)

This item inserts “former” before subparagraph 656(1)(i) to correct the reference in the subparagraph reflecting that the provision relates to the former description of integrated iron and steel manufacturing for the purpose of determining an exemption under the production method calculation which is no longer applicable.

Item [3] - Paragraphs 601(1)(b) and (c) of Schedule 6

This item inserts “(if included)” after “the Part” to remove the requirement for a classification of the emissions intensity of an activity in Schedule 6.

Item [4] – Subclause 601(1)(b) and (c) of Schedule 6 (note)

This item inserts “before 2020” after “a year” to reflect changes made from 2020 in classifying the emissions intensity of activities in Schedule 6 and in calculating the amount of a liable entity’s exemption in respect of the activity. The amendment clarifies that not all activities include a reference to highly or moderately emissions intensive in an activity description as that classification is no longer used in the calculation of an EITE exemption.

Item [5] – Subclause 656(1) of Schedule 6

This item repeals subclause 656(1) of the Principal Regulations which described the EITE activity of integrated iron and steel manufacturing as encompassing all processes specified in the former activity to satisfy the description in order to be eligible for an exemption, including the production of coke oven coke.

It replaces the subclause with subclause 656(1) and 656(1A) which provides that the activity involves either all processes specified in subclause 656(1A) which includes four components of the integrated iron and steel manufacturing activity, except for the production of coke oven coke, or all of the processes specified in subclause 656(1A) and the production of coke oven coke. The intention is to clarify that a facility could be eligible for an EITE exemption if it undertakes at least the four listed components of the activity and may undertake the production of coke oven coke, but is not essential to be eligible for exemption.

Item [6] – Subclause 656(3) of Schedule 6

This item repeals subclause 656(3) of the Principal Regulations to remove the reference to the method for determining an exemption under the production method, which is no longer a relevant method for determining an exemption amount for an EITE exemption including for integrated iron and steel manufacturing.

Item [7] – At the end of Schedule 6

This item inserts a new part 55, which includes clause 761 to add the production of hydrogen by electrolysis as an eligible EITE activity under Schedule 6. The item adds a new clause 761 which defines the production of hydrogen by electrolysis to allow for EITE exemptions to be provided in respect of electricity consumed in the production of saleable hydrogen as described. The activity boundary may also include the purification, compression, drying or liquefaction of said hydrogen, to account for necessary processes that allow for its transport and saleability.

The activity describes a process where hydrogen of 99% purity is produced through the physical and chemical transformation of water and oxygen using a splitting process by electrolysis. The hydrogen output must be of saleable quality as defined in regulation 22C in order for the electricity used in the production to be eligible for an exemption.

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 2024

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 *Renewable Energy (Electricity) Amendment (Exemptions and Other Measures) Regulations 2024* (‘Amendment Regulations’) amend the *Renewable Energy (Electricity) Regulations 2001* (‘Principal Regulations’) primarily to update the definitions of eligible EITE activities to enable eligibility for exemption for facilities that undertake the production of steel or hydrogen.

This enables facilities to apply for an emissions-intensive trade-exposed (EITE) exemption under the *Renewable Energy (Electricity) Act 2000* (the Act). It does this by updating the description of the integrated iron and steel activity in Schedule 6 of the Principal Regulations to provide that the eligible activity may or may not include the production of coke oven coke, and by adding a new regulation to Schedule 6 of the Principal Regulations to include the production of hydrogen via electrolysis as an EITE activity.

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.