EXPLANATORY STATEMENT

Select Legislative Instrument 2012 No. 227

Issued by the Authority of the Minister for Climate Change and Energy Efficiency

Renewable Energy (Electricity) Act 2000

Renewable Energy (Electricity) Amendment Regulation 2012 (No. 7)

Section 161 of the Renewable Energy (Electricity) Act 2000 (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.

The Act establishes a Renewable Energy Target (RET) scheme to encourage additional electricity generation from eligible energy sources. The RET scheme is designed to ensure that the equivalent of 20 per cent of Australia's electricity supply is generated from renewable sources by 2020. The RET scheme operates as two parts — the Large-scale Renewable Energy Target (LRET) and the Small-scale Renewable Energy Scheme (SRES).

Under the Act, wholesale purchasers of electricity ('liable parties') must meet a share of the RET in proportion to their share of the national wholesale electricity market. The Act provides for the creation of renewable energy certificates by generators of renewable energy. One certificate generally represents one megawatt-hour of electricity from eligible energy sources. The Act provides for assistance in the form of partial exemption certificates (PECs) for electricity used in activities that are considered to be emissions-intensive and trade-exposed (EITE), such as aluminium smelting and the integrated production of lead and zinc.

The Act also provides for power stations generating electricity from waste mine coal gas (WMCG) (a by-product of underground coal mining operations) to be eligible to create certificates under the RET scheme in prescribed circumstances. There are annual limits placed on each power station's ability to create certificates, based on their 2008 output level. Regulation 20FC allows the nominated person or persons for two or more accredited WCMG power stations to apply to the Clean Energy Regulator to redistribute the total of the 2008 limits between the power stations under certain circumstances, including that an application must be provided to the Clean Energy Regulator by the 30 September in the year preceding the proposed redistribution. This precludes redistribution of power stations’ annual limits for the year 2012.

The Regulation amends the Renewable Energy (Electricity) Regulations 2001 (the Principal Regulations) to allow accredited WCMG power stations to also apply for a redistribution of their WCMG eligible generation limits for 2012 provided the application is submitted by 31 October 2012.
The Regulation also amends the Principal Regulations to support the provisions of the Act that deal with the provision of assistance to entities that undertake EITE activities through the allocation of partial exemptions from liability. The partial exemptions relate to the electricity acquired for use in carrying on EITE activities for the purposes of the Act. The Regulation prescribes the production of ceramic floor and wall tiles as an EITE activity that will be eligible for assistance in the form of partial exemptions under the Act.

The Regulation also makes minor amendments to the method for calculating partial exemptions for applications from 2013 in respect of two EITE activities that are already prescribed – the production of chlorine gas and sodium hydroxide (caustic soda) solution and the production of fused zirconia. The amendments involve an increase in the electricity baselines for both activities and an increase in the category of assistance for fused zirconia, reflecting additional industry data received by the Government from entities that undertook these activities during the base period. The adjustment to the basis for assistance for these activities provides a higher level of assistance to eligible applicants in respect of these activities.

The Act provides that the Act and Principal Regulations are to be reviewed by the Climate Change Authority in 2012.

A Human Rights Statement in respect of the Regulation is included at Attachment A.

Details of the Regulation are set out in Attachment B.

The Act specifies no conditions that must be satisfied before the power to make the Regulation may be exercised.

The Regulation is a legislative instrument for the purposes of the Legislative Instruments Act 2003.

Schedule 1 of the Regulation, which provides for the amendments to the WCMG redistribution limits and the addition of the production of ceramic floor and wall tiles as an eligible EITE activity, commences on the day after it is registered on the Federal Register of Legislative Instruments. Schedule 2 of the Regulation, which provides for the amendments to the allocation of assistance for the established EITE activities (the production of chlorine gas and sodium hydroxide and the production of fused zirconia), commences on 1 January 2013.

Consultation

In developing these regulations the Department of Climate Change and Energy Efficiency consulted the relevant waste coal mine gas power generators.

The Renewable Energy (Electricity) Amendment Regulation 2012 (No. 7) reflects the outcomes of comprehensive consultation by the Department with the public and stakeholders in assessing activities for eligibility as EITE activities primarily under the Jobs and Competitiveness Program (the Program). The eligibility requirements are the same for EITE activities under the RET scheme.
The Department of Climate Change and Energy Efficiency (the Department) commenced a formal process for defining and determining the eligibility of EITE activities in February 2009 and has involved stakeholder workshops to assist in the creation of appropriate definition and boundaries for activities. The process also involved the approval of activity definitions by the Minister for Climate Change and Energy Efficiency for the purposes of data collection and publication on the Department's website. Audited data has been submitted to the Government on the basis of the approved activity definitions. Relevant industries that submitted data to the Government for the formal assessment of respective activities were consulted in regard to the drafting of the definitions to be included in the Regulations to ensure that the structure of the definitions generally reflects the conduct of the activities generally.

The policy framework for determining the eligibility of EITE activities for assistance under the Program was originally developed in 2009 and has been used to establish the eligibility of activities defined to date under the Renewable Energy Target (RET) scheme under the Act. The process for assessing activities and defining the technical aspects of the activities, including setting assistance rates and allocative baselines, is outlined in the paper titled Establishing the eligibility of activities under the Jobs and Competitiveness Program (which is available from the Department’s website www.climatechange.gov.au).

**Authority:** Section 161 of the *Renewable Energy (Electricity) Act 2000*
Statement of Compatibility with Human Rights

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

Renewable Energy (Electricity) Amendment Regulation 2012 (No. 7)

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 Renewable Energy (Electricity) Amendment Regulation 2012 (No. 7)

The Renewable Energy (Electricity) Amendment Regulation 2012 (No. 7) (the Regulation) amends the existing Renewable Energy (Electricity) Regulations 2001 (the Principal Regulations). The Principal Regulations provide an administrative framework to implement aspects of the Renewable Energy (Electricity) Act 2000 (the Act) to establish the Renewable Energy Target (RET) scheme, including in relation to power station accreditation, eligibility requirements for renewable energy sources, eligibility requirements for solar water heaters and small generation units, the calculation methods for determining the number of certificates and establish the eligibility of activities for partial exemption certificates.

The Regulation supports the provisions of the Act that deal with the circumstances under which electricity generated by existing power stations using waste coal mine gas is eligible for Large-scale Generation Certificates.

The Regulation also prescribes an additional activity that is an eligible emissions-intensive trade-exposed (EITE) activity for the purpose of eligibility for partial exemptions from liability under the RET scheme. The Regulation also amends the basis for calculating partial exemptions for applications from 2013 in respect of two EITE activities that are already prescribed.

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.

Greg Combet
Minister for Climate Change and Energy Efficiency
Details of the *Renewable Energy (Electricity) Amendment Regulation 2012 (No. 7)*

Section 1 – Name of Regulation

Section 1 provides that the title of the Regulation is the *Renewable Energy (Electricity) Amendment Regulation 2012 (No. 7)* (the Regulation).

Section 2 – Commencement

Section 2 provides that Schedule 1 and sections 1 to 3 of the Regulation commences on the day after it is registered on the Federal Register of Legislative Instruments and that Schedule 2 of the Regulation commences on the 1 January 2013.

The effect of the commencement of Schedule 2 is to specify that the amendments outlined in Items 1, 2 and 3 of Schedule 2 will only apply in respect of applications for partial exemptions for the 2013 year onwards. These changes are to increase the electricity baselines prescribed for the activities in Parts 35 and 36 of Schedule 6 to the *Renewable Energy (Electricity) Regulations 2001* (the Principal Regulations) – that is, the production of chlorine gas and sodium hydroxide (caustic soda) solution and the production of fused zirconia – and the classification of the production of fused zirconia.

Section 3 – Amendment of *Renewable Energy (Electricity) Regulations 2001*

Section 3 provides that the Principal Regulations are amended as set out in Schedules 1 and 2.

**Schedule 1 – Amendments**

**Item [1] – after subregulation 20FC (4)**

New subregulation 20FC (5) and (6) – redistribution of 2008 WCMG limits between accredited waste coal mine gas power stations.

Subsection 30G (1) of the Act enables the Clean Energy Regulator, by written determination, to vary the 2008 WCMG limit (the annual cap on eligible generation using WCMG) for an accredited power station. Subsection 30G (2) provides that the Clean Energy Regulator must make such a determination in accordance with guidelines prescribed in the regulations.

Regulation 20FC allows the nominated persons for two or more accredited power stations to apply to the Regulator to redistribute the total of the 2008 limits between the power stations under certain circumstances. This provision enables the Clean Energy Regulator to take into account the practical operational needs of power station operators to move generation capacity between their WCMG assets from time to time.

Subregulation 20FC (3) prescribes that an application for redistribution must be received by the Clean Energy Regulator no later than the 30 September in the year preceding the proposed redistribution.
New subregulation 20FC (5) expands the arrangements for redistribution of baselines to allow two or more power stations to apply for a variation of the 2008 WCMG limit for the six months commencing on 1 July 2012. The subregulation allows an application to be submitted by 31 October 2012. This amendment addresses an inflexibility whereby no application for redistribution could be made for 2012, as no person is able to comply with the requirement that the application be submitted before 30 September 2011.

New subregulation 20FC (6) provides an automatic repeal of subregulation 20 FC (5) and subregulation 20FC (6) after 31 October 2012.

**Item [2] – Paragraph 22X (1B) (c)**

Item 2 makes a minor formatting change to accommodate the amendment in Item 3.

**Item [3] – after paragraph 22X (1B) (c)**

Item 3 amends subregulation 22X(1B) to provide that applications for the 2012 calendar year only in respect of a new activity to be prescribed in the Regulations under Part 47 of Schedule 6 may be made up until 31 October 2012. This is intended to provide extra time to applicants that are undertaking the activity of the production of ceramic floor and wall tiles, to be prescribed by Item 4, to prepare an application for partial exemptions and to meet audit requirements.

In subsequent years, applications concerning all EITE activities would need to be lodged before 31 March in the year to which the application relates.

**Item [4] – Schedule 6, after part 46**

**Part 47 Production of ceramic floor and wall tiles**

**Division 1 Production of ceramic floor and wall tiles**

**Clause 737 – Production of ceramic floor and wall tiles**

Item 4 includes a new activity as an eligible emissions-intensive, trade-exposed (EITE) activity for partial exemption certificates under the Renewable Energy Target scheme.

Clause 737 provides that the production of ceramic floor and wall tiles is the physical and chemical transformation of raw clay and other raw materials, such as feldspar and quartz, into saleable ceramic floor and wall tiles. The tiles that are produced by undertaking the activity conform to the international standard of ISO 13006:2012 (issued by the International Organisation of Standardization) as in force at the time the tiles are produced, including updates to this standard, or an equivalent standard.

The activity as conducted during the period used to assess the eligibility of the activity involved the onsite grinding and milling of clay and raw materials to produce tile composite; tile rolling, pressing and cutting; preparation and application of glaze and other tile decorating; and operation of kilns and spray dryers to produce ceramic floor and wall tiles.
The inputs of the activity have been defined to include clay and other raw materials. The output of this activity is saleable ceramic floor and wall tiles that conform to ISO 13006:2012 as in force at the time the tiles are produced, or an equivalent standard.

The activity does not include the upstream mining and extraction of input materials such as clay, feldspar and quartz. The activity also does not include the production of glaze.

**Division 2 Classification of activity**

Clause 738 – Classification of activity

Clause 738 provides that the production of ceramic floor and wall tiles is an emissions-intensive, trade-exposed (EITE) activity eligible for assistance at the moderately emissions-intensive rate.

**Division 3 Electricity baseline for calculating partial exemption**

Clause 739 – Electricity baseline for product

Clause 739 provides that the electricity baseline for calculating the amount of a liable entity’s partial exemption for the production of ceramic floor and wall tiles is 0.221 megawatt-hours (MWh) per tonne of saleable ceramic floor and wall tiles.

To be eligible for assistance, the ceramic floor and wall tiles must have been produced by carrying on the activity (as defined by clause 345) to be eligible as a relevant product. For example, if imported ceramic floor and wall tiles are mixed with product produced from the activity, only the domestically produced ceramic floor and wall tiles would be included in the tonnes of the relevant product.

The tiles must be produced by undertaking the activity as described in clause 737, including that they conform to ISO 13006:2012 as in force at the time the tiles are produced (as described in clause 737), and must be of saleable quality (as defined in Regulation 22C of the Principal Regulations). In particular, the tonnes of ceramic floor and wall tiles which are scrapped, lost or discarded are not to be included in the tonnes of relevant product.

**Schedule 2 – Amendments**

**Item [1] – Schedule 6, Clause 703**

Item 1 amends the electricity baseline for the production of chlorine gas and sodium hydroxide (caustic soda) activity from 2.65 to 2.67 megawatt-hours (MWh) per tonne of sodium hydroxide. This amendment commences in 2013 and changes in the electricity baseline on which assistance in respect of this activity is calculated, which reflects further analysis of the activity based on additional data provided by entities in the industry that undertook this activity during the base period. This amendment to the electricity baseline only takes effect for applications for partial exemptions for the 2013 compliance year and subsequent years. It does not apply in respect of an application for partial exemptions for the production of chlorine gas and sodium hydroxide (caustic soda) activity for the 2012 calendar year or any earlier year.
Item [2] – Schedule 6, Clause 705

Item 2 amends clause 705 to provide that the production of fused zirconia is a highly emissions-intensive activity. This amendment commences in 2013 and changes in the assistance rate for which this activity is eligible, which reflects further analysis of the activity based on additional data provided by entities in the industry that undertook this activity during the base period. This amendment to the assistance category only takes effect for applications for partial exemptions for the 2013 compliance year and subsequent years. It does not apply in respect of an application for partial exemptions for the production of fused zirconia activity for the 2012 calendar year or any earlier year.

Item [3] – Schedule 6, Clause 706

Item 3 amends the electricity baseline for the production of fused zirconia from 4.88 to 6.07 MWh per tonne of fused zirconia. This amendment commences in 2013 and changes in the electricity baseline on which assistance in respect of this activity is calculated, which reflects further analysis of the activity based on additional data provided by entities in the industry that undertook this activity during the base period. This amendment to the electricity baseline only takes effect for applications for partial exemptions for the 2013 compliance year and subsequent years. It does not apply in respect of an application for partial exemptions for the production of fused zirconia activity for the 2012 calendar year or any earlier year.