

## **EXPLANATORY STATEMENT**

### **Select Legislative Instrument 2013 No. 144**

Issued by the Authority of the Parliamentary Secretary for Climate Change, Industry and Innovation

*Clean Energy Act 2011*

*Renewable Energy (Electricity) Act 2000*

*Clean and Renewable Energy Legislation Amendment (Various Measures) Regulation 2013*

Section 312 of the *Clean Energy Act 2011* (the CE Act) provides, in part, that the Governor-General may make regulations prescribing matters required or permitted by the CE Act, or necessary or convenient to be prescribed for carrying out or giving effect to the CE Act. Section 161 of the *Renewable Energy (Electricity) Act 2000* (the RET Act) provides, in part, that the Governor-General may make regulations prescribing matters required or permitted by the RET Act, or necessary or convenient to be prescribed for carrying out or giving effect to the RET Act.

The RET Act, as amended by the *Renewable Energy (Electricity) Amendment Act 2010* (the Amendment Act) establishes the Renewable Energy Target (RET) scheme to encourage electricity generation from eligible energy sources. The RET is designed to ensure that the equivalent of at least 20 per cent of Australia's electricity supply is generated from renewable sources by 2020. From 1 January 2011, the RET has operated as two parts - the Large-scale Renewable Energy Target (LRET) and the Small-scale Renewable Energy Scheme (SRES).

Under the RET Act, wholesale electricity purchasers ('liable entities') are required to contribute to the RET in proportion to their share of the national wholesale electricity market until the end of 2030. The LRET component of the RET Act provides for the creation of renewable energy certificates for the production of renewable energy in power stations utilising sources such as from wind, solar, hydro, various forms of biomass and geothermal energy. One certificate generally represents one megawatt-hour (MWh) of electricity from eligible energy sources. The RET Act also provides partial relief from RET liabilities for liable entities in the form of Partial Exemption Certificates (PECs) for electricity used in activities that are defined to be emissions-intensive and trade-exposed (EITE), such as aluminium smelting and the integrated production of lead and zinc.

The SRES component of the RET provides upfront support to households, businesses and community groups that install eligible small-scale renewable energy systems by allowing system owners to create, within 12 months following installation, certificates equivalent to estimated future renewable energy production over prescribed periods.

The *Renewable Energy (Electricity) Regulations 2001* (the RET Regulations) provide an administrative framework to implement the RET Act in relation to power station accreditation, eligibility requirements for renewable energy sources, eligibility requirements for small-scale systems, calculation methods for determining the number of certificates and a compliance monitoring and enforcement framework to support the integrity and smooth operation of the RET scheme for participants.

The Regulation amends the RET Regulations to implement the Australian Government's decisions, announced on 21 March 2013 as part of its response to the 2012 statutory review of the RET scheme undertaken by the Climate Change Authority (CCA), to:

- progressively reduce the lengths of the prescribed periods of renewable energy production which form the basis for upfront certificate allocations for eligible small-scale renewable energy systems;
- remove the prerequisite that a person creating certificates for an eligible small-scale generation system installation must provide data to the Clean Energy Regulator (the CER) concerning the out-of-pocket expenses for the installation and also remove the requirement for the CER to publish information on the out-of-pocket-expenses; and
- remove the requirement that persons creating certificates in relation to installations of small-scale renewable energy systems provide specified information as part of annual generation returns.

The Regulation makes minor technical amendments to the Partial Exemption Certificate application process and the calculation of the amounts of partial exemptions from RET liability for EITE activities under certain circumstances.

The Regulation also amends the *Clean Energy Regulations 2011* (CE Regulations) and the RET Regulations to include the production of dried distillers grains with solubles as an eligible EITE activity and extend the Jobs and Competitiveness Program (the Program) and Partial Exemption Certificate (PEC) application deadlines for the activity.

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

Policy guidance on the Regulation is included in [Attachment A](#).

Details of the Regulation are included in [Attachment B](#).

## **Consultation**

To inform the recommendations of the 2012 statutory review of the RET scheme, including those implemented in the Regulation, the CCA consulted extensively across a wide range of business and community stakeholders. This included release of an issues paper which generated almost 8,700 public submissions and a subsequent discussion paper with draft recommendations and stakeholder workshops which resulted in a further 50 submissions. Draft amendments to implement the agreed CCA recommendations were discussed with relevant industry bodies and stakeholders.

### *Amendments to the Jobs and Competitiveness Program*

Since 2011, the Department of Climate Change and Energy Efficiency and the Department of Industry, Innovation, Climate Change, Science, Research and Tertiary Education have undertaken an extensive consultation process to establish the eligibility of EITE activities and develop regulations to implement the Program.

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 with respect to assistance provided under the (RET scheme – *Renewable Energy*

*(Electricity) Act 2000*. 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*.

The formal process for defining and determining the eligibility of an EITE activity involves a stakeholder workshop to formulate an appropriate activity definitions and boundary, and approval of the activity definition by the relevant Minister for the purposes of data collection. Audited data based on the approved definition is then submitted to the Australian Government. If determined to be eligible, stakeholders in the relevant industry are consulted on the drafting of the definitions to be included in the Regulations to ensure that the structure of the definitions generally reflects how the activities are conducted. This process has been followed for the dried distillers grains with solubles activity included in the CE Regulations and the RET Regulations.

The Department has consulted with the dried distillers grains with solubles industry regarding the inclusion of the dried distillers grains with solubles activity and the application deadline extension throughout the process of developing the Regulation.

The Minister has taken into consideration the principles under subsection 145(5) of the CE Act regarding changes that will have a negative impact on recipients of assistance under the Program.

### **Statement of Compatibility with Human Rights**

A statement of compatibility with human rights for the purposes of Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011* is set out in Attachment C.

Authority: Section 312 of the  
*Clean Energy Act 2011*  
  
Section 161 of the  
*Renewable Energy*  
*(Electricity) Act 2000*

## **Attachment A**

### **Summary and Policy Guidance on the *Clean and Renewable Energy Legislation Amendment (Various Measures) Regulation 2013***

#### *Amendments to the Jobs and Competitiveness Program*

Schedule 1 of the Regulation amends Schedule 1 of the *Clean Energy Regulations 2011* to:

- prescribe the production of dried distillers grains with solubles as an additional eligible emissions-intensive and trade-exposed (EITE) activity under Part 3 by providing the details and specifications of the activity, including the rate of assistance that applies to the activity and the relevant product produced in undertaking the activity which forms the basis of the issue of free carbon units;
- outline the baselines in Part 4 for the new eligible EITE activity that are to be used in determining the amount of assistance for each applicant in relation to the emissions, electricity and natural gas used as a feedstock for the EITE activity; and
- provide for an extension to the deadline for 2012-13 applications for assistance for the dried distillers grains with solubles activity to 31 August 2013.

In accordance with subsection 145(5) of the Clean Energy Act 2011, the Minister has given regard to the aim and objects of Part 7 of the Act and the principle that changes that will have a negative effect on recipients of assistance under the Program should not take effect before the later of the 1 July 2017 or the end of the three-year period that begins when the reduction is announced.

#### *Changes to the Small-scale component of the Renewable Energy Target*

This Regulation implements three of the 28 recommendations made in December 2012 by the independent Climate Change Authority (CCA) following its statutory review of the Renewable Energy Target (RET) scheme that were subsequently agreed by the Australian Government in March 2013.

The three agreed CCA recommendations relate to the small-scale component of the RET scheme, referred to as the Small-scale Renewable Energy Scheme (SRES), which provides upfront support to households, businesses and community groups to install small-scale renewable generation units (solar photovoltaic (PV) systems, small wind turbines and micro-hydro systems) as well as solar and heat pump water heaters.

Under the SRES, the purchaser of an eligible small-scale renewable energy system may create, within 12 months following installation, tradable certificates equivalent to the renewable electricity production (or energy displaced in the case of solar/heat pump water heaters) deemed to occur over a nominal period, broadly based on the operating life of the system. Liable entities under the RET (mainly electricity retailers) purchase the certificates and surrender them to the Clean Energy Regulator (CER) to demonstrate their compliance with annual legislative obligations.

In contrast to the large-scale component of the RET, which has annual legislated targets that cap total certificate creation and hence the cost of the scheme to electricity users, annual SRES targets are based on an estimate of certificate creations for the year. Several deeming periods are available depending on the system technology. Three deeming options are available for

solar PV: multiple one-year or five-year periods or a single fifteen-year period. Nearly all solar PV purchasers choose 15-year deeming as it provides much stronger upfront assistance with system installation. A single ten-year deeming period is available for eligible solar and heat pump water heaters, and multiple one-year or five-year periods are available for small wind turbine and micro-hydro installations.

Prior to the Regulation being put in place, the deeming periods extended beyond 2030, which would result in eligible systems receiving support for expected renewable energy generation well beyond the RET scheme's end date of 31 December 2030 (for example, up to fifteen years beyond 2030 for solar PV installations).

Two other aspects of the SRES are relevant to this Regulation:

- Prior to the Regulation being put in place, a person who applied to create certificates under the SRES for the installation of a small generation unit (a solar PV system, small wind turbine or micro-hydro system) was required to provide information regarding the out-of-pocket expense incurred by the system purchaser. This data would help inform any future decision to reduce the price available for certificates sold through the voluntary clearing house established under the SRES rules, and is also a useful indicator of the performance of the SRES.
- The RET scheme rules also required persons who create more than 250 certificates annually under the SRES to submit annual generation returns to the CER which must include certain information on the solar water heaters and small generation units for which certificates were created.

In undertaking the 2012 statutory review of the RET scheme, the CCA had regard to four broad objectives, two of which: management of overall costs to electricity users and suppliers; and streamlining administration and compliance costs, underpin the three recommendations being implemented through the Regulation.

The CCA considered a mechanism for containing the costs of the uncapped SRES should be implemented to ensure the costs remain appropriate and to provide increased certainty to business, recommending progressively reducing deeming periods to phase out the SRES by 2030.

The Australian Government agreed to this recommendation. The steady phase-out path from 2017 signals the expectation that less support will be needed in the future as technology costs decline and carbon prices rise, and also allows time for the industry to plan and prepare.

Under this Regulation, deeming is reduced progressively starting in 2017, with reduction of the fifteen-year deeming period for solar PV by one year and then reducing by one year each year, so that by 2030 all deeming periods will have reduced to one year.

The CCA identified that compliance and administration costs of data collected by the CER could be effectively reduced by removing the existing requirements for data on out-of-pocket expenses for small generation units to be collected and the requirement for annual generation returns to be provided by entities creating certificates for eligible small-scale systems.

The Government agreed with these recommendations.

Regarding collection of out of pocket costs, it was noted that while this data assists policy-makers in identifying trends in system prices compared to the financial incentive provided by the RET, it may be more efficient to collect similar statistical information through a targeted sampling survey rather than requiring it from every small-scale generation unit certificate creator.

In respect of annual solar water heater and small generation unit returns, the Australian Government noted that most of the information provided in these returns is available through the Renewable Energy Certificate Registry, rendering the requirements unnecessary. To reduce the reporting burden, the Regulation removes the requirement for specified information to be provided in annual solar water heater and small generation unit returns.

#### *Inclusion of an additional activity eligible for partial exemptions*

Schedule 1 of the Regulation amends the *Renewable Energy (Electricity) Regulations 2001* to:

- prescribe the production of dried distillers grains with solubles as an additional eligible EITE activity by providing the details and specifications of the activity, including the rate of assistance that applies to the activity and the relevant product produced in undertaking the activity which forms the basis of the issue of free carbon units;
- outline the electricity baseline for the new eligible EITE activity; and
- provide for an extension to the deadline for 2013 applications for assistance for the dried distillers grains with solubles activity to 31 August 2013.

#### *Amendments to the Partial Exemption Certificate application process*

Under the RET Act, liable entities are required to contribute to the RET in proportion to their share of the national wholesale electricity market until the end of 2030. The RET Act provides for partial relief from RET liabilities for liable entities in the form of PECs for electricity used in activities that are defined to be an EITE activity, such as aluminium smelting and the integrated production of lead and zinc.

This regulation makes minor technical amendments to address an inflexibility in the PEC application process and anomalies in the calculation of the amounts of partial exemptions from RET liability for EITE activities under certain circumstances.

This regulation allows an EITE entity to apply for a second PEC in a situation where a second liable entity started supplying electricity during the year, but at the start of a compliance year was not a liable entity in relation to electricity consumed at the site.

This regulation also allows for a situation where a new applicant applying for a PEC can calculate their level of partial exemption according to the regulations.

**Details of the Clean and Renewable Energy Legislation Amendment (Various Measures) Regulation 2013**

**Section 1 – Name of Regulation**

This section provides that the title of the Regulation is the *Clean and Renewable Energy Legislation Amendment (Various Measures) Regulation 2013*.

**Section 2 – Commencement**

This section provides for sections 1 to 4 and Schedule 1 to the Regulation to commence on the day after registration on the Federal Register of Legislative Instruments; and for Schedule 2 to commence on 29 July 2013.

**Section 3 – Authority**

This section sets out that the Regulation is made under the authority of the *Renewable Energy (Electricity) Act 2000* (the RET Act) and the *Clean Energy Act 2011* (CE Act).

**Section 4 – Schedules**

This section provides that each instrument specified in Schedules 1 and 2 to the Regulation is amended or repealed as set out in the Schedule concerned, and that any other item in Schedules 1 and 2 has effect according to its terms.

**Schedule 1 – Amendments commencing on the day after registration**

***Clean Energy Regulations 2011***

**Item 1 – At the end of Part 3 of Schedule 1**

This item prescribes an additional activity as an eligible emissions-intensive trade-exposed (EITE) activity for free carbon units under the Jobs and Competitiveness Program (the Program).

Clause 350 provides that the production of dried distillers grains with solubles is the physical and/or chemical transformation of condensed distillers solubles, with a moisture content equal to or greater than 55 per cent, and/or wet distillers grains, with a moisture content equal to or greater than 60 per cent, into saleable dried distillers grains with solubles, with a moisture content of equal to or less than 12 per cent and a protein content of equal to or greater than 20 per cent on a dry solids basis.

The production of dried distillers grains with solubles is an EITE activity eligible for assistance at the highly emissions-intensive rate.

The activity as conducted during the period used to assess the eligibility of the activity involved the onsite decantation, mixing, drying and cooling of condensed distillers solubles and mill feed to produce dried distillers grains with solubles.

The inputs of the activity have been defined to include condensed distillers solubles, with a moisture content equal to or greater than 55 per cent, and/or wet distillers grains, with a moisture content equal to or greater than 60 per cent. The output of this activity is saleable dried distillers grains with solubles, with a moisture content of equal to or less than 12 per cent and a protein content of equal to or greater than 20 per cent on a dry solids basis.

The activity does not include the upstream production of condensed distillers solubles and wet distillers grains. The activity also does not include the production of high purity ethanol.

Subclause 350(4) outlines that the basis of issue of free carbon units is by a tonne of dried distillers grains with solubles. The measurement of the relevant dried distillers grains with solubles should be measured according to the accepted industry practice for dried distillers grains with solubles production.

To be eligible for assistance, the dried distillers grains with solubles must have been produced by carrying on the activity (as defined by clause 350) to be eligible as a relevant product. For example, if imported dried distillers grains with solubles is included with the product produced from the activity, only the domestically produced dried distillers grains with solubles would be included in the tonnes of the relevant product.

The dried distillers grains with solubles must be of saleable quality (as defined by regulation 202). In particular, the tonnes of dried distillers grains with solubles which are lost or discarded are not to be included in the tonnes of relevant product.

#### **Item 2 - Subclause 401(1) of Schedule 1 (after table item 1.33)**

This item inserts into the table in Part 4 of Schedule 1, allocative baselines for assistance that relate to the production of dried distillers grains with solubles as prescribed by item 1.34, which is categorised as a highly emissions-intensive activity.

The baselines are for the direct emissions and electricity use for the activity in clause 350.

The formula for calculating the number of free permits in Part 9 of Schedule 1 to *Clean Energy Regulations 2011* (the CE Regulations) applies the baselines as outlined in the table.

#### **Item 3 - After subclause 702(1F) of Schedule 1**

This item allows for applications for free carbon units for the production of dried distillers grains with solubles to be given to the Clean Energy Regulator (CER) no later than 31 August 2013.

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

#### **Items 4, 5 and 6 – Reducing the length of deeming periods**

Items 4 to 6 of this schedule amend regulations 19B, 19BA and 19D of the RET Regulations and insert new regulation 19BE. The new regulation progressively reduces the lengths of the prescribed periods of renewable energy production (the deeming periods) which form the basis for upfront allocations of tradable Small-scale Technology Certificates (STCs) for eligible small-scale renewable energy systems under the RET scheme.



#### **Item 4 – Subregulation 19B(2) and paragraph 19BA(3)(a)**

Item 4 modifies subregulation 19B(2) and paragraph 19BA(3)(a) to remove the fixed ten-year deeming period applicable to eligible solar water heater installations (which for the purposes of the RET Regulations includes heat pump water heaters) and replace it with the variable deeming period specified in new regulation 19BE.

#### **Item 5 – After regulation 19BD**

Item 5 inserts new regulation 19BE which stipulates that for solar water heaters installed on or before 31 December 2021 the deeming period is ten years, and that for installations during the calendar years 2022 to 2030 the deeming period for those installations is according to the table specified in item 5. This deeming period (column 2 of the table) is reduced by one year each year so that the deeming period for eligible solar water heaters installed in 2030 (the final year) is one year.

#### **Item 6 – Subregulations 19D(2) and (3)**

Item 6 substitutes subregulations 19D(2) and 19D(3) to stipulate the new deeming arrangements for small generation units (solar photovoltaic (PV) systems, small wind turbines and micro-hydro systems).

Several fixed deeming periods were available depending on the system technology.

Three deeming options were available for solar PV: multiple one-year or five-year periods or a single 15-year period. Multiple 1-year or 5-year periods were available for small wind turbine and micro-hydro installations.

Paragraph 19D(2)(a) modifies the 1-year and 5-year deeming options by stipulating that for small generation units installed on or before 31 December 2026 the deeming periods are 1 or 5 years, and that for installations during the calendar years 2027 to 2030 the deeming periods are according to the table specified in the paragraph. The larger deeming period in column 2 of the table is reduced by one year each year from 2027 so that the sole deeming period for eligible small generation units installed in 2030 (the final year) is one year.

Paragraphs 19D(2)(b) and 19D(2)(c) retain the previous rules around transferring between deeming periods and multiple deeming periods for an eligible installation while also accounting for the modified deeming option.

Paragraph 19D(2)(d) modifies the single 15-year deeming option for solar PV installations by stipulating that for systems installed on or before 31 December 2016 the deeming period is 15 years, and that for installations during the calendar years 2017 to 2030 the deeming periods are according to the table specified in the paragraph. The deeming period in column 2 of the table is reduced by one year each year from 2017 so that the sole deeming period for eligible solar PV systems installed in 2030 (the final year) is one year.

Subregulation 19D(3) retains the pre-existing requirement that for installations where the deeming option under Paragraph 19D(2)(d) is taken up, no further deeming period can be provided.

## **Items 7 and 8 – Provision of Out-of Pocket Expense data**

Items 7 and 8 remove the requirement that a person creating STCs for an eligible small generation unit installation must provide data on the out-of-pocket expenses for the installation to the CER.

### **Item 7 – Regulations 19E and 19F**

Item 7 repeals regulations 19E and 19F, which required the certificate creator to provide prescribed data on the net out-of-pocket expenses of the installation (including inter alia wiring, grid connection and battery storage costs) to the CER at the time the certificates are created in the on-line certificate registry. This imposes an additional burden on small business and households participating in the RET scheme, requiring the collection and submission of data for every system installed. The Government considers this data could be collected more effectively and efficiently through an appropriate survey method.

### **Item 8 – Subregulation 19G(4)**

Item 8 substitutes subregulation 19G(4) to preserve the definition of out-of-pocket expense to allow publication of out-of-pocket expense information for the quarter ending 30 June 2013.

### **Item 9 – Division 2.4 of Part 2**

Section 23F of the RET Act requires any registered person that creates more than 250 certificates in a calendar year to lodge a ‘solar water heater and small generation unit return’ to the CER. The preparation and assessment of these generation returns imposes an administrative burden on the registered person and the CER. Most of the information provided in annual generation returns is available through the on-line Renewable Energy Certificate Registry maintained by the CER so the separate reporting of the information is unnecessary.

Item 9 repeals Division 2.4 of Part 2 (Solar water heater and small generation unit returns) of the RET Regulations and removes the requirement to provide certain information in the returns.

## **Items 10 and 11 – Partial Exemption Certificates**

The RET Act provides, at section 46A, that a prescribed person may apply to the CER for a Partial Exemption Certificate (PEC) for a year in relation to the RET-liable electricity used in a prescribed EITE activity which is, or is to be, carried out on at a site during the year.

The RET Regulations set out the circumstances under which prescribed persons may apply for a PEC for a particular year, in respect of a particular EITE activity and a particular RET-liable entity (electricity supplier) and carried out at a specific site.

### **Item 10 – Paragraph 22M(b) &**

### **Item 11 – Subparagraph 22M(d)(iv)**

Previously, regulation 22M only allowed an EITE entity to apply for a second PEC where two or more liable entities were simultaneously supplying electricity to the site at the start of the year. However, the situation where a second liable entity started supplying electricity during the year, but at the start of a compliance year was not a liable entity in relation to electricity consumed at the site was not accommodated.

Item 10 amends paragraph 22M(b) to allow the EITE entity to apply for a second PEC if any time during the year an additional (RET-liable) retailer starts supplying electricity.

Item 11 amends subparagraph 22M(d)(iv) to accommodate the additional flexibility made available through item 10. Items 10 and 11 operate in conjunction with item 13 and 16 to address this inflexibility.

As an example, assume Company A operates a zinc smelter at a particular site with only one (RET-liable) electricity retailer supplying electricity at the start of the year. These amendments would allow for Company A to apply under amended regulation 22 M for a second PEC, if during the year the company decides to source part of its electricity from an additional liable entity. The original PEC would be reduced in accordance with the methodology in existing regulation 22ZQ and the amount of the additional PEC would be calculated under regulation 22ZG.

### **Item 12 - After subregulation 22X(1C)**

This item allows for applications for PECs for the production of dried distillers grains with solubles to be given to the CER before 1 September 2013.

### **Item 13 – Subregulation 22X(3)**

Item 13 amends subregulation 22X(3) to provide the flexibility for an entity undertaking an EITE activity at a particular site and year to apply any time during that year for a second PEC in respect of a further electricity retailer which becomes a liable entity in respect of that activity and site during the year, but after the beginning of that year. This amendment is made in conjunction with items 10 to 11 above.

### **Items 14 and 15 – Partial Exemption Certificates**

Existing regulation 22I allows a prescribed person to apply for a PEC for an EITE activity that is not yet carried on at the site but will be carried on at the site during the application year. An application must be made by 31 March of the year to which the application relates.

Existing regulation 22ZA sets out the method for calculating the amount of the liable entity's partial exemption represented by the PEC. The partial exemption is calculated according to a formula which includes various factors defined in regulations 22ZA to 22ZE.

Regulation 22ZE prescribes the formula for calculating one of these factors (factor 'G'). The formula for G calculates a ratio of electricity used in the activity that is liable under the RET to total electricity used. However, the formula requires data on electricity consumed on the site in the financial year that ended 6 months before the year to which the application relates. As new entrant applicants will not have this data, a PEC cannot be calculated or issued in such cases.

### **Item 14 and 15 – Subregulation 22ZE(1)**

Items 14 and 15 make technical amendments to subregulation 22ZE(1) to provide more flexibility in the terms used in the equation to calculate the G factor. The revised definition of the terms allows the calculation of the G factor for new entrant applicants to be based on reasonable estimates of the electricity to be consumed in the financial year that began six months before the year to which the application relates.

## **Item 16 – Paragraph 22ZQ(1)(d)**

This item operates in conjunction with items 10 and 11 to address a technical anomaly in the process for providing a PEC. Item 16 amends paragraph 22ZQ(1)(d) to allow for a situation where a second liable entity may start supplying electricity during the year, but at the start of a compliance year was not a liable entity in relation to electricity consumed at the site.

## **Item 17- At the end of Schedule 6**

Item 17 inserts in Schedule 6 to the RET Regulations a new Part 50, comprising 3 divisions which together define the activity ‘production of dried distillers grains with solubles’ as an EITE activity, including the scope of the activity, its emissions-intensity classification and electricity baseline. The inclusion of the production of dried distillers grains with solubles in the RET Regulations as an emissions-intensive trade-exposed (EITE) activity will enable partial exemptions from liability under the Renewable Energy Target (RET) scheme to be provided in respect of electricity used in undertaking this activity.

### Clause 746 – Production of dried distillers grains with solubles

Clause 746 provides that the production of dried distillers grains with solubles is the physical and/or chemical transformation of condensed distillers solubles, with a moisture content equal to or greater than 55 per cent, and/or wet distillers grains, with a moisture content equal to or greater than 60 per cent, into saleable dried distillers grains with solubles, with a moisture content of equal to or less than 12 per cent and a protein content of equal to or greater than 20 per cent on a dry solids basis.

The activity as conducted during the period used to assess the eligibility of the activity involved the onsite decantation, mixing, drying and cooling of condensed distillers solubles and mill feed to produce dried distillers grains with solubles.

The inputs of the activity have been defined to include condensed distillers solubles, with a moisture content equal to or greater than 55 per cent, and/or wet distillers grains, with a moisture content equal to or greater than 60 per cent. The output of this activity is saleable dried distillers grains with solubles, with a moisture content of equal to or less than 12 per cent and a protein content of equal to or greater than 20 per cent on a dry solids basis.

The activity does not include the upstream production of condensed distillers solubles and wet distillers grains. The activity also does not include the production of high purity ethanol.

## **Division 2 Classification of activity**

### Clause 747 – Classification of activity

Clause 747 prescribes that the production of dried distillers grains with solubles is classified as a highly emissions-intensive activity. This has the effect that electricity used in the activity as defined is eligible for a partial exemption from RET liability at the highly emissions-intensive rate.

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

#### Clause 748 – Electricity baseline for product

Clause 748 provides that the electricity baseline for calculating the amount of a liable entity's partial exemption for the production of dried distillers grains with solubles is 0.0785 megawatt-hours per tonne of saleable dried distillers grains with solubles.

To be eligible for assistance, the dried distillers grains with solubles output must have been produced by carrying on the activity (as defined by clause 746) to be eligible as a relevant product. For example, if imported dried distillers grains with solubles is mixed with output produced from the activity, only the proportion of dried distillers grains with solubles that is an output from the activity would be included in the tonnes of the relevant product.

The dried distillers grains with solubles must be of saleable quality (as defined in Regulation 22C of the Principal Regulations). In particular, the tonnes of dried distillers grains with solubles which are lost or discarded are not to be included in the tonnes of relevant product.

#### **Schedule 2 - Amendments commencing 29 July 2013**

Item 1 of this Schedule repeals regulation 19G from 29 July 2013 to remove the requirement for the CER to publish details of out-of-pocket expenses, which will not be required once the CER has published the details of the data already collected for the quarter ending 30 June 2013.

## **Statement of Compatibility with Human Rights**

*Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011*  
***Clean and Renewable Energy Legislation Amendment (Various Measures) Regulation 2013***

This Regulation 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 *Clean and Renewable Energy Legislation Amendment (Various Measures) Regulation 2013***

The Regulation:

- implement the Australian Government's decisions, announced on 21 March 2013 as part of its *response* to the 2012 statutory review of the Renewable Energy Target (RET) scheme undertaken by the Climate Change Authority, to:
  - progressively reduce the lengths of the prescribed periods of renewable energy production which form the basis for upfront certificate allocations for eligible small-scale renewable energy systems; and
  - remove the pre-requisite that a person creating certificates for an eligible small-scale generation system installation must provide data on the out-of-pocket cost of the installation to the Clean Energy Regulator (the CER) and also remove the requirement for the CER to publish aggregate information on the out-of-pocket expenses; and
  - remove the requirement that persons creating certificates in relation to installations of small-scale renewable energy systems to provide specified information relating to annual generation returns;
- prescribes a new emissions-intensive trade-exposed (EITE) activity, dried distillers grains with solubles; and
- makes minor technical amendments to address an inflexibility in the Partial Exemption Certificate application process and anomalies in the calculation of the amounts of partial exemptions from RET liability for EITE activities under certain circumstances.

### **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.

**Yvette D'Ath**

**Parliamentary Secretary for Climate Change, Industry and Innovation**