

## **EXPLANATORY STATEMENT**

### **Select Legislative Instrument No. 179, 2014**

Issued by the Authority of the Minister for the Environment

*Clean Energy Act 2011*

*Renewable Energy (Electricity) Act 2000*

*Clean Energy Legislation Amendment (2014 Measures No.1) Regulation 2014*

The *Clean Energy Legislation Amendment (2014 Measures No.1) Regulation 2014* (the Regulation) amends the *Clean Energy Regulations 2011* (the CE Regulations) and the *Renewable Energy (Electricity) Regulations 2001* (the RET Regulations).

The *Clean Energy Act 2011* (the CE Act), together with the other Acts of the Clean Energy Legislative Package, implemented the carbon tax. The *Clean Energy Legislation (Carbon Tax Repeal) Act 2014* (the Repeal Act) repealed the legislation which gave effect to the operation of the carbon tax and the related assistance under the Jobs and Competitiveness Program (JCP) from 2014-15. Despite its repeal, Part 3 of the Repeal Act continues in force certain sections of the CE Act as if repeal had not occurred. In particular, section 312 of the CE Act is continued in force by the Repeal Act and 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.

Part 7 of the CE Act, as continued in force by the Repeal Act, provides for the establishment of the JCP to support jobs and the competitiveness of industries conducting emissions-intensive, trade-exposed (EITE) activities during the years in which the carbon tax operated, 2012-13 and 2013-14. The administrative framework for the JCP is contained in the CE Regulations, as continued in force by the Repeal 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 also provides for assistance to industries conducting EITE activities in the form of Partial Exemption Certificates (PECs) which reduce a liable entity's requirement to purchase renewable energy for electricity supplied to EITE entities. The administrative framework for this is provided under the RET Regulations.

The Regulation amends the CE Regulations and RET Regulations to add two EITE activities - the 'production of ferrovanadium' and the 'rendering of animal by-products' - as eligible for assistance in the form of free carbon units under the JCP for the two years in which the carbon tax operated and PECs under the RET scheme from the 2015 compliance year onwards.

The Regulation also:

- establishes the baselines for the new EITE activities which are used to determine the number of free carbon units under the JCP and PECs that each applicant would be eligible for in relation to the activities;
- permits JCP applications to be made retrospectively for the new EITE activities for the 2012-13 and 2013-14 financial years;
- provides that production data for the year of application is required to be provided in applications for JCP assistance in respect of the new EITE activities, rather than the previous year production data;
- makes a minor amendment to the description of the ‘production of coal char’ EITE activity under the JCP and the RET to revise the output specification of the activity;
- makes minor amendments to the calculation of the sub-threshold adjustment that is part of the calculation of assistance under the JCP; and
- makes minor amendments to the record keeping provisions of the JCP to clarify how they apply in relation to the final true-up of allocations under the *Clean Energy Legislation (Carbon Tax Repeal) (Jobs and Competitiveness Program) Rules 2014*.

Details of the Regulation are included in Attachment A.

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 B.

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 JCP. There are no further statutory pre-conditions that need to 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*.

## Consultation

Since 2011, the Department of the Environment (and the former Department of Climate Change and Energy Efficiency and former Department of Industry, Innovation, Climate Change, Science, Research and Tertiary Education) has undertaken an extensive consultation process to establish the eligibility of EITE activities and develop regulations to implement the JCP.

The policy framework for determining the eligibility of EITE activities for assistance under the JCP was originally developed in 2009 and has been used to establish the eligibility of activities with respect to assistance provided under the RET scheme. 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, *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 appropriate activity definitions and boundaries, and approval of the activity definitions 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 ferrovandium and meat rendering activities.

The Department has consulted with the ferrovandium and meat rendering industries regarding the inclusion of the ferrovandium and meat rendering activities throughout the process of developing the Regulation.

Authority: Section 312 of the *Clean Energy Act 2011*, as continued in force by section 323 of the *Clean Energy Legislation (Carbon Tax Repeal) Act 2014*

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

**Details of the Clean Energy Legislation Amendment (2014 Measures No.1) Regulation 2014**

**Section 1 – Name**

This section provides that the name of the Regulation is the *Clean Energy Legislation Amendment (2014 Measures No.1) Regulation 2014* (the Regulation).

**Section 2 – Commencement**

This section provides for the Regulation to commence on the day after registration on the Federal Register of Legislative Instruments.

**Section 3 – Authority**

This section specifies that the Regulation is made under the authority of the *Clean Energy Act 2011* (CE Act)<sup>1</sup> and the *Renewable Energy (Electricity) Act 2000* (the RET Act).

**Section 4 – Schedules**

This section provides that the Regulation amends or repeals each instrument that is specified in a Schedule to the Regulation, and that any other item in a Schedule to this Regulation has effect according to its terms.

**Schedule 1 - Amendments**

**PART 1 – MAIN AMENDMENTS**

***Clean Energy Regulations 2011***

**Item 1 – At the end of Part 14**

This item adds a new regulation 14.5 to the record keeping provisions in Part 14 of the *Clean Energy Regulations 2011* (the CE Regulations) in relation to reports that are provided to the Clean Energy Regulator (the Regulator) for the purpose of a final true-up of 2013-14 allocations under the Jobs and Competitiveness Program (JCP).

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<sup>1</sup> Although the CE Act has been repealed by the *Clean Energy Legislation (Carbon Tax Repeal) Act 2014* (the Repeal Act), section 323 of the Repeal Act provides that section 312 of the CE Act continues in force for the purposes of compliance in the 2012-13 and 2013-14 financial years. The amendments made to the *Clean Energy Regulations 2011* by the *Clean Energy Legislation Amendment (2014 Measures No. 1) Regulation 2014* are limited in scope to these years.

The *Clean Energy Legislation (Carbon Tax Repeal) (Jobs and Competitiveness Program) Rules 2014* (the JCP True-up Rules) provide for a final adjustment to be made to JCP allocations for 2013-14, given that the adjustment which would have occurred in the subsequent year's application will no longer occur following the repeal of the carbon tax legislation.

This item requires that a person who gives the Regulator a report or further information for the purpose of a final true-up under the JCP True-up Rules must keep a record of that document. Similar record keeping requirements apply to JCP applications in Schedule 1 of the CE Regulations.

### **Item 2 – After paragraph 337(4)(c) of Schedule 1**

This item inserts a new condition under the description of relevant product in the 'production of magnetite concentrate' eligible activity. It is intended to clarify that any magnetite concentrate that is included as relevant product for the issue of free carbon units under the magnetite concentrate activity is not also able to be the same magnetite concentrate that is further refined to produce ferrovandium under the 'production of ferrovandium' activity.

This item is intended to prevent double dipping of assistance by clarifying that any output of magnetite concentrate that is eligible for assistance as relevant product under the 'production of magnetite concentrate' activity is not also eligible to be used in the 'production of ferrovandium' activity.

### **Item 3 – Paragraph 352(1)(b) of Schedule 1**

This item replaces paragraph 352(1)(b) in the description of the 'production of coal char' activity with a new paragraph 352(1)(b). This new paragraph replaces the criteria that the output exhibits a certain silicon dioxide reactivity with a new specification that the coal char has a fixed carbon content of greater than or equal to 92 per cent after production.

Item 19 outlined below clarifies that the new description of the coal char output produced in undertaking the activity applies to JCP applications that have been made for the years 2012-13 and 2013-14.

### **Item 4 – Paragraph 352(4)(b) of Schedule 1**

This item removes the reactivity specification in paragraph 352(4)(b), which outlines the production of coal char for the purpose of describing the basis for the issue of free carbon units to eligible applicants. It includes a new paragraph 352(4)(b) to specify that the coal char has a fixed carbon content of greater than or equal to 92 per cent after production.

Item 19 outlined below clarifies that the new description of the coal char output produced in undertaking the activity applies to JCP applications that have been made for the years 2012-13 and 2013-14.

## **Item 5 - At the end of Part 3 of Schedule 1**

This item prescribes the ‘production of ferrovanadium’ as an eligible emissions-intensive trade-exposed (EITE) activity for free carbon units under the JCP for the period in which the JCP operated (2012-13 and 2013-14).

### *Division 53 – Production of ferrovanadium*

Subclause 353(1) provides that the production of ferrovanadium is the physical and chemical transformation of magnetite ore (ore containing  $\text{Fe}_3\text{O}_4$  and mineralised vanadium compounds) combined with soda ash and other chemicals to produce saleable ferrovanadium (FeV) where the concentration of vanadium (V) is equal to or greater than 75 per cent.

Vanadium is a metal that is primarily used as a hardening agent in steel production.

Subclauses 353(2) and (3) provide that the production of ferrovanadium is an EITE activity eligible for assistance at the highly emissions-intensive rate.

The inputs of the activity have been defined to include magnetite ore, soda ash and other chemicals. The output of this activity is tonnes of saleable ferrovanadium concentrate where the concentration of vanadium is greater than 75 per cent.

The activity does not include the extraction or production of any of the raw materials, such as magnetite ore or soda ash. The activity also does not include any downstream processes such as steel production, or ancillary activities such as packaging.

Subclause 353(4) outlines that the basis of issue of free carbon units is by a tonne of 100 per cent equivalent vanadium concentrate contained within saleable ferrovanadium that has a concentration of vanadium equal to or greater than 75 per cent, which results from carrying out the activity as described. The amount of 100 per cent equivalent vanadium in tonnes that is contained within the ferrovanadium metal output must be measured and reported as the production amount upon which assistance will be calculated. The baselines outlined in Part 4 of Schedule 1 to the CE Regulations relate to this 100 per cent equivalent vanadium content, not just the amount of saleable ferrovanadium that is produced.

To be eligible for assistance, the ferrovanadium must have been produced by carrying on the activity (as defined by subclause 353(1)) in Australia to be eligible as a relevant product. For example, if imported ferrovanadium is mixed with output produced from the activity, only the 100 per cent equivalent vanadium that is contained in the proportion of ferrovanadium that is an output from the activity undertaken in Australia would be included in the tonnes of the relevant product.

Paragraph 353(4)(b) contains a reciprocal provision to that contained in item 2 to specify that any ferrovanadium that is produced under the ferrovanadium activity is not eligible output if it is also eligible under the production of magnetite concentrate activity. The intention is to clarify that any magnetite concentrate that is eligible for assistance as relevant product for the issue of free carbon units under the ‘production of magnetite concentrate’ activity which is then used in the production of vanadium under the ‘production of ferrovanadium’ activity is not eligible

product for the issue for free carbon units under the ‘production of ferrovanadium’ activity.

The ferrovanadium must be of saleable quality (as defined by clause 202). In particular, the tonnes of 100 per cent equivalent vanadium contained within saleable ferrovanadium which are for testing purposes and are discarded rather than saleable are not to be included in the tonnes of relevant product eligible for assistance.

#### *Division 54 – Rendering of animal by-products*

Subclause 354(1) provides that the rendering of animal by-products is the physical and chemical transformation of raw livestock-derived animal material, where the output of the activity is processed animal protein meal (such as meat and bone meal, dried blood meal, poultry meal and feather meal) with a moisture content that does not exceed 10 per cent by weight, and tallow (refined fat) with a moisture content that does not exceed 4 per cent by weight.

Subclauses 354(2) and (3) provide that the rendering of animal by-products is an EITE activity eligible for assistance at the moderately emissions-intensive rate.

The inputs of the activity have been defined to include raw livestock-derived animal material. The outputs of this activity are:

- tonnes of saleable animal protein meal with a moisture content that does not exceed 10 per cent by weight; and
- tonnes of saleable tallow with a moisture content which does not exceed 4 per cent by weight.

The activity does not include any meat processing activities. The activity also does not include any downstream or ancillary processes such as packaging.

Subclause 354(4) outlines that the basis of issue of free carbon units is by a tonne of saleable processed animal protein meal with a moisture content that does not exceed 10 per cent by weight which results from carrying out the activity as described.

To be eligible for assistance, the animal protein meal must be produced from carrying on the activity (as defined by subclause 354(1)) in Australia to be eligible as a relevant product. For example, if imported animal protein meal is mixed with output produced from the activity, only the proportion of animal protein that is an output from the activity undertaken in Australia would be included in the tonnes of the relevant product.

The animal protein meal must be of saleable quality (as defined by clause 202). In particular, the tonnes of animal protein meal which are for testing purposes or scrap and are discarded rather than saleable are not to be included in the tonnes of relevant animal protein for the purpose of assistance.

### **Item 6 - Subclause 401(1) of Schedule 1 (after table item 1.35)**

This item inserts into the table in Part 4 of Schedule 1 the allocative baselines for assistance that relate to the production of ferrovanadium as prescribed by item 5 above, which is categorised as a highly emissions-intensive activity.

The baselines outlined in item 6 are for the direct emissions and electricity use for the activity in new Division 53 (as outlined in item 5), to be allocated per tonne of 100 per cent equivalent vanadium contained within saleable ferrovanadium produced by undertaking the activity as prescribed.

The formula for calculating the number of free permits in Part 9 of Schedule 1 to the CE Regulations applies the baselines as outlined in the table.

### **Item 7 - Subclause 401(1) of Schedule 1 (after table item 2.16)**

This item inserts into the table in Part 4 of Schedule 1 the allocative baselines for assistance that relate to the rendering of animal by-products as prescribed by item 5 above, which is categorised as a moderately emissions-intensive activity.

The baselines outlined in item 7 are for the direct emissions and electricity use for the activity in new Division 54 (as outlined in item 5), to be allocated per tonne of saleable processed animal protein meal produced by undertaking the activity as prescribed.

The formula for calculating the number of free permits in Part 9 of Schedule 1 to the CE Regulations applies the baselines as outlined in the table.

### **Item 8 – After subclause 702(1C) of Schedule 1**

This item amends the timeframes in which applications for free carbon units must be made under clause 702 in relation to the ‘production of ferrovanadium’ and the ‘rendering of animal by-products’ activities. In particular, this item inserts a new subclause 702(1D) which allows for applications for free carbon units in relation to only these activities to be given to the Regulator by 31 December 2014. This timeframe applies to applications relating to the financial years ending 30 June 2013 and 30 June 2014.

### **Item 9 – After subclause 902(2) of Schedule 1**

This item refers to the method for determining the number of free carbon units that the Regulator must issue for approved JCP applications in relation to the new activities in item 5 (the production of ferrovanadium and the rendering of animal by-products). This item provides that a maximum cap adjustment and sub-threshold adjustment that is relevant to an application, which would have been made ex-post (as part of a 2014-15 application) if the JCP continued beyond 2013-14, should instead be made as part of the calculation of assistance for the 2013-14 year. The intention of this provision is to avoid the need for applicants in respect of the two new activities to undertake a final true-up process as set out in the JCP True-up Rules subsequent to the JCP application process. Instead, all relevant adjustments for the year to which the application relates should be made in determining the final allocation for that year.



### **Item 10 – Subclause 906(3) of Schedule 1**

This item refers to the formula that is used to calculate an allocation of assistance based on an entity's production. This amends the references to the formula for the calculation of assistance for the activities in Divisions 51 and 52 of Part 3 (the production of glass wool and the production of coal char) to refer to the formula in either subclause 907(7) or (7A). Subclause 907(7A) is a new provision that is inserted by item 12 below.

### **Item 11 – At the end of clause 906 of Schedule 1**

This item inserts a new subclause 906(4) to provide that the production amount to be used to calculate the number of free carbon units for a 2012-13 and 2013-14 JCP application in respect of the production of ferrovandium and the rendering of animal by-products activities is determined using the formula outlined in the new subclause 907(7A). Subclause 907(7A) is a new provision that is inserted by item 12 below.

### **Item 12 – After subclause 907(7) of Schedule 1**

This item inserts a new subclause 907(7A) to provide that the number of free carbon units for a JCP application in respect of certain activities (including the newly prescribed production of ferrovandium and the rendering of animal by-products activities) may be based on production for the 2012-13 and 2013-14 years respectively, rather than providing production data for the previous financial year (2011-12 and 2012-13).

This allows the applicants to provide to the Regulator audited information on actual production at the facility for the relevant financial year of the application in order to calculate the free carbon units. Given that production for the two eligible financial years is available, allowing actual production to be used avoids the process usually undertaken for other JCP applications where the Regulator calculates the number of free carbon units based on the previous financial year's production and then undertakes a process to true-up the allocation of free carbon units based on the actual production.

### **Item 13 – After subclause 912(5) of Schedule 1**

This item inserts an alternative to the sub-threshold adjustment under Method 1 for applications where the adjustment would otherwise result in a negative allocation for a sub-threshold facility. This item provides that in these cases, the sub-threshold adjustment would be to reduce the number of free carbon units that are to be issued to an eligible applicant by an equivalent number of carbon units to the allocation for the direct emissions baseline of an activity (that is, the EI allocation) that was provided to an applicant in the previous financial year.

The effect of this provision would be to allow the Regulator to make an ex-post adjustment to a sub-threshold facility's allocation for its 2013-14 application as if the EI allocation in 2012-13 were zero. This would avoid a situation where a sub-threshold adjustment under Method 1 (where Method 2 was not possible) would result in a negative allocation because a facility's total direct emissions (excluding emissions from combustion of natural gas) are greater than its allocation in the previous year.

#### **Item 14 – After subclause 1206(1) of Schedule 1**

This item inserts a new subclause 1206(1A) to provide that the requirement to report to the Regulator that no application will be made in the following financial year does not apply if that following financial year commences on 1 July 2013 or a later date. This is intended to clarify that with the repeal of the carbon tax legislation, the JCP will not operate for the 2014-15 compliance year or a later year, so the Regulator is aware that no applications for free units will be made after the 2013-14 compliance year.

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

#### **Item 15 – After paragraph 715(c) of Schedule 6**

This item inserts a new condition under the description of relevant product in the ‘production of magnetite concentrate’ eligible activity. This description clarifies that any magnetite concentrate that is included as relevant product for assistance under the magnetite concentrate activity is not also able to be the same magnetite concentrate that is further refined to produce ferrovandium under the ‘production of ferrovandium’ activity.

This item is intended to prevent double dipping of assistance by clarifying that any output of magnetite concentrate that is eligible for assistance as relevant product under the ‘production of magnetite concentrate’ activity is not also eligible to be used in the ‘production of ferrovandium’ activity.

#### **Item 16 – Paragraph 752(1)(b) of Schedule 6**

This item replaces paragraph 752(1)(b) in the description of the ‘production of coal char’ activity with a new paragraph 752(1)(b). This item removes the criteria that the coal char output exhibits a silicon dioxide reactivity and replaces this with a new specification that the coal char has a fixed carbon content of greater than or equal to 92 per cent after production.

This new description of the activity applies to any PEC application for the 2015 year onwards.

#### **Item 17 – Paragraph 754(b) of Schedule 6**

This item replaces paragraph 754(b), which outlines the production of coal char for the purpose of describing the basis for partial exemption certificates to eligible applicants. This item removes the criteria that the output exhibits silicon dioxide reactivity adds a new paragraph 754(b) to specify that the coal char has a fixed carbon content of greater than or equal to 92 per cent after production.

This new description of the activity applies to any PEC application for the 2015 year onwards.

## **Item 18 – At the end of the Regulations**

This item inserts in Schedule 6 to the RET Regulations new Parts 53 and 54, each comprising three Divisions which together define two new EITE activities - the production of ferrovanadium and the rendering of animal by-products. The inclusion of these EITE activities in the RET Regulations will enable partial exemptions from liability under the RET scheme to be provided in respect of electricity used in undertaking the activities for 2015 onwards.

### **Part 53 – Production of ferrovanadium**

#### **Division 1 – Production of ferrovanadium**

##### Clause 755 – Production of ferrovanadium

Clause 755 provides that the production of ferrovanadium is the physical and chemical transformation of magnetite ore (ore containing  $\text{Fe}_3\text{O}_4$  and mineralised vanadium compounds) combined with soda ash and other chemicals to produce saleable ferrovanadium (FeV) where the concentration of vanadium (V) is equal to or greater than 75 per cent.

Vanadium is a metal that is primarily used as a hardening agent in steel production.

The inputs of the activity have been defined to include magnetite ore, soda ash and other chemicals. The output of this activity is tonnes of saleable ferrovanadium concentrate where the concentration of vanadium is greater than 75 per cent.

The activity does not include the extraction or production of any of the raw materials, such as magnetite ore or soda ash. The activity also does not include any downstream processes such as steel production, or ancillary activities such as packaging.

The activity is an eligible EITE activity for the purpose of PECs issued under the RET scheme.

#### **Division 2 Classification of activity**

##### Clause 756 – Classification of activity

Clause 756 prescribes that the production of ferrovanadium 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 757 – Electricity baseline for product

Clause 757 provides that the electricity baseline for calculating the amount of a liable entity's partial exemption for the production of ferrovanadium is 58.7 megawatt-hours (MWh) per tonne of 100 per cent equivalent vanadium concentrate contained within saleable ferrovanadium in which the concentration of vanadium is equal to or greater than 75 per cent.

To be eligible for assistance, the ferrovanadium must have been produced by carrying on the activity (as defined by clause 755) in Australia to be eligible as a relevant product. For example, if imported ferrovanadium is mixed with output produced from the activity, only the proportion of ferrovanadium that is an output from the activity would be included in the tonnes of the relevant product.

Any ferrovanadium that is produced from magnetite concentrate that was eligible for assistance under the production of magnetite concentrate activity is not eligible as relevant product under the production of ferrovanadium activity.

The ferrovanadium must be of saleable quality (as defined in regulation 22C of the RET Regulations). In particular, the tonnes of ferrovanadium which are for testing purposes and are discarded rather than saleable are not to be included in the tonnes of 100 per cent equivalent vanadium contained within saleable ferrovanadium.

## **Part 54 – Rendering of animal by-products**

### **Division 1 – Rendering of animal by-products**

#### Clause 758 – Rendering of animal by-products

Clause 758 provides that the rendering of animal by-products is the physical and/or chemical transformation of raw livestock-derived animal material, where the output of the activity is processed animal protein (such as meat and bone meal, dried blood meal, poultry meal and feather meal) with a moisture content that does not exceed 10 per cent by weight, and tallow (refined fat) with a moisture content that does not exceed 4 per cent by weight.

The inputs of the activity have been defined to include raw livestock-derived animal material. The outputs of this activity are:

- tonnes of saleable animal protein meal with a moisture content that does not exceed 10 per cent by weight; and
- tonnes of saleable tallow with a moisture content which does not exceed 4 per cent by weight.

The activity does not include any meat processing activities. The activity also does not include any downstream processes such as packaging.

The activity is an eligible EITE activity for the purpose of PECs issued under the RET scheme.

### **Division 2 Classification of activity**

#### Clause 759 – Classification of activity

Clause 759 prescribes that the rendering of animal by-products is classified as a moderately 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 moderately emissions-intensive rate.

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

### Clause 760 – Electricity baseline for product

Clause 760 provides that the electricity baseline for calculating the amount of a liable entity's partial exemption for the rendering of animal by-products is 0.248 megawatt-hours (MWh) per tonne of saleable processed animal protein meal with a moisture content that does not exceed 10 per cent by weight which results from carrying out the activity as described.

To be eligible for assistance, the animal protein must have been produced by carrying on the activity (as defined by clause 758) in Australia to be eligible as a relevant product. For example, if imported animal protein is mixed with output produced from the activity, only the proportion of animal protein that is an output from the activity undertaken in Australia would be included in the tonnes of the relevant product.

The animal protein must be of saleable quality (as defined in regulation 22C of the RET Regulations). In particular, the tonnes of animal protein which are for testing purposes or scrap and are discarded rather than saleable are not to be included in the tonnes of animal protein meal for the purpose of assistance.

## **PART 2 – APPLICATION AND TRANSITIONAL PROVISIONS**

### *Clean Energy Regulations 2011*

#### **Item 19 – After Part 23**

This item inserts a new Part 24 in the CE Regulations to clarify the application of the amendments made by items 3 and 4 of Schedule 1 to this Regulation. This item specifies that the new description of the coal char activity applies to JCP applications that have already been made to the Regulator in circumstances where the Regulator has not already made a final determination on (that is, approved or rejected) the application. The intention is to avoid the need for an applicant to submit an additional application where one has already been submitted but for which a decision by the Regulator has not been made. The Regulator could manage the application of the minor adjustment to the description of the coal char activity to relevant existing applications by requesting additional information from applicants.

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

#### **Item 20 – After Part 8**

This item inserts a new Part 9 in the RET Regulations to clarify the application of the amendments made by items 14 and 15 of Schedule 1 to this Regulation. This item specifies that the new description of the coal char activity applies to applications for partial exemption certificates that have already been made to the Regulator in circumstances where the Regulator has not already made a final determination on the application. The intention is to avoid the need for an applicant to submit an additional application to cover off on a minor adjustment to the description of the coal char activity. The new description also applies in relation to future applications that are made in relation to coal char after the Regulation is made.

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

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

### **Clean Energy Legislation Amendment (2014 Measures No.1) Regulation 2014**

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 Clean Energy Legislation Amendment (2014 Measures No.1) Regulation 2014**

The Regulation is designed to include two additional activities, the production of ferrovanadium and the rendering of animal by-products, as eligible under the Jobs and Competitiveness Program (JCP) for the two years in which the carbon tax operated, and on an ongoing basis under the Renewable Energy Target (RET) scheme.

The Regulation is also designed to extend the deadline for applications to be made under the JCP to allow assistance to be provided retrospectively for the 2012-13 and 2013-14 compliance years in relation to the new eligible activities.

The Regulation is also designed to make other minor amendments in relation to the description of the 'production of coal char' eligible activity under both the JCP and the RET, the calculation of the sub-threshold adjustment to JCP allocations and to the record keeping provisions of the JCP.

#### **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 Hunt**

**Minister for the Environment**