EXPLANATORY STATEMENT

Select Legislative Instrument 2012 No. 32

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

Clean Energy (Consequential Amendments) Act 2011

Clean Energy (Consequential Amendments) Regulation 2012

The Clean Energy Act 2011 (CE Act), together with the other Acts in the Clean Energy Legislative Package, implements the Government’s climate change plan, as set out in Securing a clean energy future: the Australian Government’s climate change plan. As part of this plan, the Clean Energy Regulator will take on statutory functions under a range of existing Acts. In particular, once the CE Act commences, the Clean Energy Regulator will assume the functions, and take over the records, of the Greenhouse and Energy Data Officer (GEDO).

Item 228 of Schedule 1 to the Clean Energy (Consequential Amendments) Act 2011 (Consequential Amendments Act) provides that the Governor-General may make regulations in relation to transitional matters arising out of the amendments made by Part 1 of Schedule 1 to that Act.

Item 219 of Schedule 1 to the Consequential Amendments Act makes transitional provision to maintain the secrecy of information obtained under the National Greenhouse and Energy Reporting Act 2007 (NGER Act) before the CE Act commences. This Regulation makes further transitional provision to allow for the disclosure and publication of that information consistently with the provisions for disclosure and publication of the information under the NGER Act as in force before the commencement of the CE Act.

General policy guidance on the purpose of the Regulation is provided at Attachment A.

Details of the Regulation are set out at Attachment B.

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

Consultation

The Clean Energy Legislative Package reflects the outcomes of comprehensive consultation with the public and stakeholders.

- In September 2010 the Government announced the establishment of the Multi-Party Climate Change Committee (MPCCC) to consult, negotiate, and report to the Cabinet, through the Minister for Climate Change and Energy Efficiency, on agreed options for the implementation of a carbon price in Australia, and to provide advice on, and participate in, building community consensus for action on climate change.
- On 24 February 2011, the Prime Minister announced the climate change framework outlining the broad architecture for a carbon pricing mechanism, which had been considered by the MPCCC.
The Department of Climate Change and Energy Efficiency conducted a public consultation process on the proposed mechanism in April and May 2011.

On 10 July 2011, the Government published *Securing a clean energy future: The Australian Government’s climate change plan*.

On 28 July 2011, the Government released draft bills of the legislation included in the Clean Energy Legislative Package, and received over 300 submissions on those bills.

Since the passage of the Clean Energy Legislative Package, the Government has consulted extensively with those covered by the mechanism and related reforms in relation to implementation and compliance issues.

The proposed amendments are administrative in nature and reflect machinery of Government changes associated with the establishment of the Clean Energy Regulator, with no effect on business. Consultation on the amendments was therefore not required.

**Authority:** Item 228 of Schedule 1 to the *Clean Energy (Consequential Amendments) Act 2011*
General Policy Guidance on the *Clean Energy (Consequential Amendments) Regulation 2012*

The Regulation makes transitional provision to allow for the disclosure and publication of information obtained under the NGER Act before the commencement of the CE Act on 2 April 2012. The provisions are consistent with the provisions for disclosure and publication of the information under the NGER Act as in force before 2 April 2012.

If information was obtained by a person from the GEDO and, before 2 April 2012, the information could have been published in aggregate form by that person with the agreement of the GEDO, the Regulation ensures that, on or after 2 April 2012, the information can be published in aggregate form by that person with the agreement of the Clean Energy Regulator.

If information was held by the GEDO and transferred to the Clean Energy Regulator from 2 April 2012 and, before 2 April 2012, the information could have been disclosed by the GEDO under section 26 of the NGER Act, the Regulation ensures that the information can, on or after 2 April 2012, be disclosed by the Clean Energy Regulator in the same circumstances.

If, before 2 April 2012, the GEDO was required to disclose certain information to a State or Territory, the Regulation ensures that the Clean Energy Regulator must, on or after 2 April 2012, disclose the information to the State or Territory if not already disclosed to the State or Territory.

If, before 2 April 2012, the GEDO could disclose information at the request of a registered corporation, the Regulation ensures that, on or after 2 April 2012, the Clean Energy Regulator can disclose the same information at the request of the registered corporation.
Details of the Clean Energy (Consequential Amendments) Regulation 2012

1 – Name of Regulations

Section 1 provides that the name of the Regulation is the *Clean Energy (Consequential Amendments) Regulation 2012*.

2 – Commencement

Section 2 provides that the Regulation commences on the commencement of section 3 of the CE Act, which was set at 2 April 2012 by a Proclamation (F2011L02617) made on 7 December 2011.

3 – Definitions

Section 3 defines expressions used in the Regulation.

4 – Purpose of regulation

Section 4 sets out the authority to make the Regulation and the purpose of the Regulation.

5 – Continuation of subsection 24 (6) of NGER Act

Section 24(6) of the NGER Act currently provides that the GEDO may agree that a person publish certain information disclosed to the person by the GEDO. From the commencement of section 3 of the CE Act on 2 April 2012, section 24(6) will be amended by item 153A of Part 1 of Schedule 1 to the Consequential Amendments Act. Section 24(6) will no longer apply to the information covered by current section 24(6).

The information covered by current section 24(6) may need to be published on or after 2 April 2012 in the same circumstances as before 2 April 2012.

Section 5 of the Regulation continues the operation of section 24(6) so that the information may be published on or after 2 April 2012 in the same circumstances as before 2 April 2012. It replaces the reference to the GEDO in section 24(6) with a reference to the Clean Energy Regulator because the GEDO will no longer exist and it is appropriate that the Clean Energy Regulator perform the function of agreeing to publication.
6 – Continuation of section 26 of NGER Act

Section 26 of the NGER Act currently allows the GEDO to disclose greenhouse and energy information in specified circumstances. From the commencement of section 3 of the CE Act on 2 April 2012, item 155 of Part 1 of Schedule 1 to the Consequential Amendments Act will repeal section 26 of the NGER Act. From 2 April 2012, greenhouse and energy information held by the GEDO will be transferred to the Clean Energy Regulator under item 217 of Schedule 1 to the Consequential Amendments Act.

However, the Clean Energy Regulator will not be able to disclose the information under Part 3 of the Clean Energy Regulator Act 2011 because the information will not be ‘protected information’ as defined by section 4 of that Act. From 2 April 2012, it may be necessary for the Clean Energy Regulator to disclose greenhouse and energy information (as defined by section 7 of the NGER Act before 2 April 2012) in the circumstances set out in repealed section 26.

Section 6 of the Regulation provides that section 26 of the NGER Act continues to apply to allow for disclosure of the information. It replaces the references to the GEDO in section 26 with references to the Clean Energy Regulator because the GEDO will no longer exist and the Clean Energy Regulator will hold the information. It continues in force the power to make regulations under section 26(1).

Section 6 does not continue the application of section 26(4A) of the NGER Act because that provision allows the GEDO to disclose information to the Carbon Credits Administrator. From 2 April 2012, the functions of the Carbon Credits Administrator will be performed by the Clean Energy Regulator and the records of the Carbon Credits Administrator will be transferred to the Clean Energy Regulator.

7 – Regulator may disclose particular greenhouse and energy information

Section 27 of the NGER Act currently requires the GEDO to disclose certain greenhouse and energy information to States and Territories. Section 28 of the NGER Act currently allows the GEDO to disclose certain greenhouse and energy information at the request of a registered corporation to a person specified by the registered corporation.

From the commencement of section 3 of the CE Act on 2 April 2012, the references to the GEDO in sections 27 and 28 will be changed to references to the Clean Energy Regulator by items 158 and 159 of Schedule 1 to the Consequential Amendments Act. From 2 April 2012, greenhouse and energy information held by the GEDO will be transferred to the Clean Energy Regulator under item 217 of Schedule 1 to the Consequential Amendments Act.

However, from 2 April 2012, the definition of ‘greenhouse and energy information’ in section 7 of the NGER Act will exclude information reported to the GEDO because the reference to the GEDO in that definition will be replaced with a reference to the Clean Energy Regulator by item 107 of Schedule 1 to the Consequential Amendments Act.
It may be necessary for the Clean Energy Regulator to disclose information reported to the GEDO in the same circumstances as it discloses greenhouse and energy information as defined from 2 April 2012.

Section 7 of the Regulation authorises the Clean Energy Regulator to disclose information reported to the GEDO before 2 April 2012 under sections 27 and 28 as in force from 2 April 2012.
Statement of Compatibility with Human Rights

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

Clean Energy (Consequential Amendments) Regulation 2012

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 Energy (Consequential Amendments) Regulation 2012

The Regulation makes transitional provision to allow for the disclosure and publication of information obtained under the NGER Act before the commencement of the CE Act on 2 April 2012.

Human rights implications

The Regulation engages the right to privacy and reputation, at least to the extent that it applies to disclosure and publication of information of individuals.

While disclosure and publication of information may limit the right to privacy, the Regulation is not considered to be incompatible with the right. This is because the Regulation, in effect, continues in force provisions for disclosure and publication of information which:

- applied when the information was collected; and
- provided for disclosure and publication only to the extent reasonably necessary for the purposes of the NGER Act.

Conclusion

This Regulation is compatible with human rights because, to the extent that it limits human rights, it is reasonable, necessary and proportionate.

Greg Combet
Minister for Climate Change and Energy Efficiency