

EXPLANATORY STATEMENT

Select Legislative Instrument 2012 No. 126

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

Clean Energy Act 2011

Clean Energy Amendment Regulation 2012 (No. 4)

Section 312 of the *Clean Energy Act 2011* (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, together with the other Acts of the Clean Energy Legislative Package, establishes the carbon pricing mechanism as part of the Government's climate change plan, as set out in the document *Securing a Clean Energy Future: the Australian Government's Climate Change Plan*.

The *Clean Energy Amendment Regulation 2012 (No. 4)* amends the *Clean Energy Regulations 2011* (the Principal Regulations) to:

- make a minor technical amendment concerning the definition of 'liquid petroleum gas';
- prescribe the adjustment of a provisional emissions number in the Joint Petroleum Development Area and Greater Sunrise Unit Area;
- make minor technical amendments to the definition of 'withdrawal' in relation to natural gas supply pipelines; and
- include the manufacture of reconstituted wood-based panels as an eligible emissions-intensive, trade-exposed (EITE) activity under the Jobs and Competitiveness Program and outline the baselines in Part 4 for the activity that are to be used in determining the amount of assistance for each applicant in relation to the activity.

One of the objects of the Act is to put a price on greenhouse gas emissions in a way that supports jobs and competitiveness in the economy. Part 7 of the Act provides for the establishment of the Jobs and Competitiveness Program (the Program) to support jobs and protect the competitiveness of EITE industries from risks that those industries will be located in, or relocated to, foreign countries as a result of different climate change policies applying in Australia compared to foreign countries. The Program also provides support for industry, local communities and workers to have a smooth transition to a clean energy future.

Section 145 of the Act provides that the Regulations may formulate the details of the Program for the annual issue of free carbon units in relation to EITE activities as defined by the Program. EITE activities are industrial activities that produce a lot of carbon pollution but where the capacity of entities undertaking those activities to pass through costs is constrained where prices are set by global markets. The Program was first established in amendments to the *Clean Energy Regulations 2011* on 24 February 2012.

Subsection 145(5) of the Act provides that in making a recommendation to the Governor-General about regulations that amend regulations made for the purposes of subsection 145(1) of the Act, the Minister must have regard to the following matters:

- the aim and objects of this Part 7 of the Act;
- the most recent report given to the Productivity Minister by the Productivity Commission in relation to an inquiry mentioned in section 155 of the Act;
- 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 following
 - o 1 July 2017; and
 - o the end of the 3-year period that begins when the reduction is announced;
- such other matters (if any) as the Minister considers relevant.

There are currently no relevant reports from the Productivity Commission.

A summary of the key amendments made by the Regulation is provided at [Attachment A](#).

A Human Rights Statement in respect of the Regulation is included at [Attachment B](#).

Details of the Regulation are set out in [Attachment C](#).

The Act does not specify conditions that need to be satisfied before the power to make the Regulation may be exercised in addition to the consideration of the matters in subsection 145(5) of the Act.

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

The Regulation commences on 1 July 2012.

Consultation

The Department of Climate Change and Energy Efficiency has 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 Renewable Energy Target (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 Minister for Climate Change and Energy Efficiency

for the purposes of data collection. Audited data based on the approved definition is then submitted to the Government. If determined to be eligible, stakeholders in the relevant industry are 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.

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

Authority: Section 312 of the *Clean Energy Act 2011*

Summary and Policy Guidance on the *Clean Energy Amendment Regulation 2012* (No. 4)

The Regulation amends the *Clean Energy Regulations 2011* to:

- ‘amend the definition of liquid petroleum gas’;
- prescribe the adjustment of a provisional emissions number in the Joint Petroleum Development Area and Greater Sunrise unit area;
- make minor technical amendments to the definition of ‘withdrawal’ in relation to natural gas supply pipelines;

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

- prescribe an additional eligible EITE activity, manufacture of reconstituted wood-based panels, 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; and
- 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 use and natural gas used as a feedstock for the EITE activity.

In accordance with subsection 145(5) of the Act, the Minister for Climate Change and Energy Efficiency 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 3-year period that begins when the reduction is announced.

Statement of Compatibility with Human Rights

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

Clean Energy Amendment Regulation 2012 (No. 4)

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 Amendment Regulation 2012 (No. 4)

The Regulation is designed to include an additional activity as eligible under the Jobs and Competitiveness Program (the Program). The Program is a key component of the carbon pricing mechanism targeted at supporting industries that produce a lot of carbon pollution but are constrained in their capacity to pass through costs in global markets.

The Regulation is also designed to set the prescribed percentage for facilities in the Joint Petroleum Development Area and the Greater Sunrise Unit Area for the first three years of the carbon pricing mechanism. It also makes minor amendments to the definition of ‘withdrawal’ to clarify when liability arises in relation to emissions embodied in natural gas.

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 Clean Energy Amendment Regulation 2012 (No. 4)

PART 1 - PRELIMINARY

Section 1 – Name of Regulation

Section 1 provides that the title of the Regulation is the *Clean Energy Amendment Regulation 2012 (No. 4)* (the Regulation).

Section 2 – Commencement

Section 2 provides for the Regulation to commence on 1 July 2012.

Section 3 – Amendment of Clean Energy Regulations 2011

Section 3 provides that the Regulation amends the *Clean Energy Regulations 2011* (the Principal Regulations) in the manner set out by Schedule 1.

SCHEDULE 1 – Amendments

Item [1] – Regulation 1.3, definition of liquid petroleum gas, or LPG

Item [1] revises the definition to use the term ‘liquefied’ petroleum gas in place of ‘liquid’ petroleum gas. Item [1] aligns the language employed in the regulations with the terminology used by industry.

Item [2] – Paragraph 1.9(1)(a)

Item [2] amends Regulation 1.9 to clarify the circumstances in which natural gas is withdrawn for the purpose of establishing when liability arises for emissions embodied in natural gas. Item [2] substitutes the words ‘at which’ with ‘in relation to which’ in order to clarify that for a withdrawal to occur the point at which natural gas exits a pipeline does not have to precisely align with the point at which the gas supplied to a person wholly or partly for use is ascertained.

Item [3] – After subregulation 1.9(1)

Item [3] amends Regulation 1.9 to establish transitional arrangements whereby a withdrawal that takes place between 1 July 2012 and 31 August 2012 is taken to occur on 1 September 2012. This will provide for persons required or permitted to quote an OTN in relation to a supply of gas that is withdrawn between 1 July 2012 and 31 August 2012 to quote that OTN by 1 September 2012 providing additional flexibility for OTN holders at the commencement of the mechanism.

Item [4] – After regulation 3.2

Sections 26, 27 and 28 of the *Clean Energy Act 2011* provide that the regulations may specify the percentage of emissions from facilities in the Joint Petroleum Development Area (JPDA) and the Greater Sunrise Unit Area which are subject to the carbon pricing mechanism. Item [4] prescribes that the percentage under these sections is zero for the three financial years

beginning 1 July 2012, 1 July 2013 and 1 July 2014. The Government may alter the percentage under these sections by amendment before this time. This means that no liability will arise for emissions from facilities in the JPDA or the Greater Sunrise unit area in the first three years of the carbon pricing mechanism.

Item [5] – Regulation 3.5

Item [5] revises the definition to use the term ‘liquefied’ petroleum gas in place of ‘liquid’ petroleum gas. This item aligns the language employed in the regulations with the terminology used by industry.

Item [6] – Schedule 1, Part 3, after Division 43

Division 44 Manufacture of reconstituted wood-based panels

Clause 344

Clause 344 provides that the manufacture of reconstituted wood-based panels is the physical or chemical transformation of wood, including wood particles and residues (such as chips, savings, sawdust) into a reconstituted wood-based panel (such as particleboard and medium density fibreboard) with a density of greater than 500 kilograms per cubic metre (kg/m^3) and where the individual wood particles or fibres in the wood based panel have an average maximum dimension of no greater than 30 millimetres (mm).

Manufacture of reconstituted wood-based panels is an EITE activity eligible for assistance at the moderately emissions-intensive rate.

The inputs of the activity have been defined to include woodchips, sawdust and wood shavings. The outputs of this activity are saleable raw constituted wood-based panel with a density of greater than 500 kg/m^3 and where the wood-based panels have an average maximum dimension of no greater than 30 mm.

The activity does not include the upstream preparation of raw log, such as de-barking and chipping or the downstream processing of raw board into subsequent products. As such, the relevant facility is that where the output is actually produced and does not extend to separate facilities that may conduct upstream or downstream processing but not the activity as described.

Subclause 344(4) outlines that the basis of issue is per tonne of raw reconstituted wood-based panel (such as particleboard and medium density fibreboard) that has a density of greater than 500 kg per cubic metre and has individual wood particles or fibres with an average maximum dimension of no more than 30 mm.

The reconstituted wood-based panels must have been produced by carrying out the activity as defined to be eligible as a relevant product.

The reconstituted wood-based panels must be of saleable quality. Wood panels that are discarded or reprocessed because they do not meet output specifications are not of saleable quality. Wood panels of saleable quality do not include cover boards and other materials used for packaging.

Item [7] – Schedule 1, subclause 401 (1), table, after item 2.11

Item [7] inserts into the table in Part 4 of Schedule 1 allocative baselines for assistance that relate to the manufacture of reconstituted wood-based panels activity as prescribed by item 6, which is categorised as a moderately emissions-intensive activity. The baselines are for the direct emissions and electricity use for the activity in clause 344. The baselines have been established as the weighted industry average of the emissions and electricity intensity of the activities, based on historical data submitted by the entities undertaking the activity during the base period, consistent with the principles of the JCP outlined in *Establishing the eligibility of activities under the Jobs and Competitiveness Program*. The formula for calculating the number of free permits in Part 9 of Schedule 1 to the Regulations applies the baselines as outlined in the table.