

# **EXPLANATORY STATEMENT**

## **Select Legislative Instrument 2013 No. 58**

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

*Clean Energy Act 2011*

*Renewable Energy (Electricity) Act 2000*

*Clean Energy Legislation Amendment Regulation 2013 (No. 1)*

Section 312 of the *Clean Energy Act 2011* (the CE Act) provides that the Governor-General may make regulations prescribing matters required or permitted by the CE Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act. The CE Act, together with the other Acts of the Clean Energy Legislative Package, sets up the carbon pricing mechanism (the mechanism) as part of the Government's climate change plan, as set out in *Securing a clean energy future: the Australian Government's climate change plan*.

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 establishes the Renewable Energy Target (RET) scheme to encourage electricity generation from eligible energy sources.

The *Clean Energy Legislation Amendment Regulation 2013 (No. 1)* (the Regulation) amends the *Clean Energy Regulations 2011* (the CE Regulations) and the *Renewable Energy (Electricity) Regulations 2001* (the RET Regulations).

The CE Regulations are amended to:

- provide necessary details that allow compliance with, and administration of, the Clean Energy Act in relation to coverage of non-transport liquefied petroleum gas (LPG) and liquefied natural gas (LNG) under the carbon pricing mechanism; and
- make minor and technical amendments to the CE Regulations.

The Regulation also amends the CE Regulations and the RET Regulations to include an additional sub-activity in the Jobs and Competitiveness Program (the Program) and the RET scheme, and make associated administrative amendments.

### *Amendments to the coverage of LPG and LNG under the carbon pricing mechanism*

From 1 July 2013 a carbon price will be applied to non-transport LPG and LNG directly under the carbon pricing mechanism, rather than through an equivalent carbon price delivered through the fuel tax system.

Part 3, Division 3A of the CE Act sets out the requirements for liability to arise for non-transport LPG and LNG, and provides that certain amounts of LPG or LNG may be exempt from liability through the CE Regulations. Exemption is either via a ‘net-out’ from a liable entity’s preliminary emissions number or an exemption from coverage. These powers provide for adjusting liability to ensure that emissions are not double counted, that liability is not imposed on LPG or LNG that does not result in emissions, or in limited circumstances, to ensure liability is not imposed where it would impose unreasonably high compliance costs. The Regulation exempts LPG and LNG where it is imported or packaged in small containers, such as for camp stoves and soldering, or imported or packaged in aerosol canisters, or for use as refrigerants. The Regulation allows for an amount of LPG and LNG to be netted-out where the LPG or LNG will be used as a feedstock.

Under Division 4 of the CE Act, the regulations may set out the circumstances in which a person is required or permitted to use an Obligation Transfer Number (OTN) that transfers liability from a supplier to an end user of LPG or LNG, and the circumstances in which a supplier must accept an OTN quotation that is permitted but not required by the CE Act.

The Regulation requires quotation of an OTN where LPG or LNG is supplied for use at a large LPG or LNG consuming facility. Voluntary OTN quotation is permitted by entities that use LPG and/or LNG as a feedstock, for entities that are also required to quote an OTN in relation to a large LPG or LNG consuming facility, and for approved recipients with facilities that are likely to be large LPG or LNG consuming facilities. When an LPG or LNG user voluntarily quotes an OTN, the Regulation will require the supplier of the LPG or LNG to accept the quotation. The Regulation also sets out the requirements for OTN applications for users of LPG or LNG.

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

Part 7 of the CE Act provides for the establishment of the Program to support jobs and the competitiveness of industries conducting emissions-intensive trade-exposed (EITE) activities. The administrative framework for this is provided under the CE Regulations. The RET Act also provides for assistance in the form of Partial Exemption Certificates (PECs) from the requirement to purchase renewable energy for electricity consumed by industries conducting EITE activities. The administrative framework for this is provided under the RET Regulations.

The Regulation amends the CE Regulations and RET Regulations to:

- include, within the existing EITE activity of integrated lead and zinc production, the production of lead metal with a concentration of lead of at least 99.5 per cent and less than 99.97 per cent as a sub-activity eligible for assistance in the form of free carbon units and PECs;
- extend the deadline for 2012-13 applications for free carbon units to be provided to the Clean Energy Regulator from 31 October 2012 to 30 June 2013 for the integrated production of lead and zinc activity; and
- extend the deadline for 2013 PEC applications to be provided to the Clean Energy Regulator before 1 April 2013 to before 1 July 2013 for the integrated production of lead and zinc activity.

Subsection 145(5) of the CE Act provides that in making a recommendation to the Governor-General about regulations made for the purposes of subsection 145(1) of the Act, the Minister must have regard to the aim and objects of 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; 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 1 July 2017 or the end of the three-year period that begins when the reduction is announced.

There are currently no relevant reports from the Productivity Commission. The Minister has had regard to the principles in subsection 145(5), and decided to implement changes to the integrated lead and zinc activity in accordance with these principles.

#### Other miscellaneous minor amendments

The Regulation also makes minor and technical amendments to the CE Regulations. These amendments include:

- clarifying the scope of fuel liability for a person who has opted-in to the carbon pricing mechanism for the fuel use of a person's GST group (a grouping arrangement available under taxation legislation);
- providing a definition of 'fugitive emissions' to provide certainty that fugitive emissions from a decommissioned underground mine are not covered under the carbon pricing mechanism;
- making reviewable a decision by the Clean Energy Regulator to disqualify a person from bidding in an auction of carbon units for up to five years, as outlined in the *Clean Energy (Auction of Carbon Units) Determination 2013*; and
- specifying the 'kinds of amounts' payable by the Commonwealth to a person that the Clean Energy Regulator may 'set off' against certain debts that are owed to it under the CE Act.

Details of the Regulation are set out in Attachment A.

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

Sections 1-4 and Schedule 1, items 3-36 of the Regulation commences on the day after it is registered on the Federal Register of Legislative Instruments. Items 1 and 2 of Schedule 1 commence on 1 July 2013.

## Consultation

### Amendments to the treatment of LPG and LNG

The coverage of non-transport LPG and LNG in the carbon pricing mechanism is in response to requests from industry. The then-Department of Climate Change and Energy Efficiency (DCCEE) undertook extensive consultation to develop policy for the carbon pricing mechanism coverage of LPG and LNG and the details for the legislative implementation of that policy in 2011 and 2012.

The DCCEE convened a working group with affected stakeholders from November 2011 and held a number of teleconferences during the development of the LPG and LNG legislative amendments and had formal and informal discussions with interested stakeholders.

The relevant draft provisions of the *Clean Energy Legislation Amendment Bill 2012* were released to a technical working group of industry participants and also a legal experts' group for a limited exposure period prior to the introduction of the Bill to Parliament.

A discussion paper outlining the proposed elements of the LPG and LNG regulations was provided to the stakeholder working group in August 2012. The DCCEE received 2 submissions from the main industry associations representing LPG and LNG stakeholders.

An exposure draft of the Regulation was released on 14 December 2012 and 5 submissions were received.

The Department of Industry, Innovation, Climate Change, Science, Research and Tertiary Education (the Department) and the DCCEE have had numerous discussions with businesses and the Clean Energy Regulator in the development of these amendment regulations.

### Amendments to the Jobs and Competitiveness Program

Since 2011, the DCCEE and the Department 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 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 relevant Minister 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 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 integrated production of lead and zinc activity included in the CE Regulations and the RET Regulations.

The Department has also consulted with industry regarding the changes to the application deadline extension for the integrated lead and zinc activity.

The Minister has taken into consideration the principles under subsection 145(5) of the 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 at Attachment B.

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

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

**Details of the *Clean Energy Legislation Amendment Regulation 2013 (No. 1)***

**Section 1 – Name of Regulation**

Section 1 provides that the name of the Regulation is the *Clean Energy Legislation Amendment Regulation 2013 (No. 1)* (the Regulation).

**Section 2 – Commencement**

Section 2 provides for sections 1 to 4, and items 3 to 37 of Schedule 1 to the Regulation to commence on the day after registration on the Federal Register of Legislative Instruments and items 1 and 2 of Schedule 1 to the Regulation to commence on 1 July 2013.

**Section 3 – Authority**

Section 3 specifies that the Regulation is made under the *Clean Energy Act 2011* (CE Act) and the *Renewable Energy (Electricity) Act 2000* (RET Act).

**Section 4 – Schedule(s)**

Section 4 provides that the Regulation amends or repeals each instrument that is specified in a Schedule to the Regulation.

**Schedule 1**

***Clean Energy Regulations 2011***

**1 Regulation 1.3**

Item 1 includes ‘fugitive emissions’ as a defined term in the regulations. The definition is provided in new regulation 1.5.

**2 After regulation 1.4**

Item 2 inserts new regulation 1.5, which provides a definition of ‘fugitive emissions’. The CE Act allows for a definition of ‘fugitive emission’ to be provided in the regulations. For the purposes of the CE Act, the use of the term ‘fugitive emissions’ is limited to subsection 30(8), which provides that fugitive emissions from a decommissioned underground mine are not considered to be covered emissions. This definition does not limit the exclusion provided in the CE Act, instead it provides certainty that fugitive emissions from decommissioned underground mines continue to not be considered covered emissions.

In addition to its use in the CE Act, the term ‘fugitive emissions’ is used more widely in the suite of Clean Energy legislation. The inclusion of the definition in the regulations will also provide clarity and consistency as the definition reflects the approach that is proposed to be adopted in the *National Greenhouse and Energy Reporting (Measurement) Determination 2008*.

### **3 Regulation 1.15**

Item 3 repeals regulation 1.15 as this administrative provision is no longer required.

### **4 After Division 3 of Part 3**

Item 4 inserts new Division 3A into the *Clean Energy Regulations 2011* (the CE Regulations) to provide for exemptions and netted-out numbers for non-transport liquefied petroleum gas (LPG) and liquefied natural gas (LNG).

#### Regulation 3.5F

Regulation 3.5F exempts LPG from liability when it is packaged in small containers (such as for use in camp stoves or as a propellant in an aerosol) or for use as a refrigerant.

Under regulation 3.5F, LPG is exempt from liability when it is packaged in a non-refillable container that holds up to 1 kilogram of LPG, or when it is packaged in a container that holds up to 10 kilograms of LPG that indicates it is intended for use as a refrigerant and does not indicate it is for combustion.

Such an exemption may also be applied to an amount of LPG which is supplied by an importer, manufacturer or producer to another person (the recipient), if the recipient provides a statutory declaration to the importer, manufacturer or producer stating the LPG is only for packaging in a container as outlined above.

#### Regulation 3.5G

Regulation 3.5G enables importers, manufacturers and producers of LPG or LNG, as well as Obligation Transfer Number (OTN) holders, to reduce their liability to account for any LPG or LNG used as a feedstock where they would otherwise have a liability for that LPG or LNG through the use of a netted-out number.

### **5 and 6 Paragraph 3.6(2)(b) and at the end of paragraph 3.6(3)(d)**

Items 5 and 6 amend regulation 3.6, which sets out the information that must be included in an application for an OTN for natural gas. These amendments extend its operation to provide for OTN applications for LPG or LNG users. An OTN application for LPG or LNG must be accompanied by the identifying information for the applicant and a statement indicating whether the applicant is likely to be required or permitted to quote an OTN under section 58AA or 58AB of the CE Act.

An application must also be accompanied by the information and documents detailed in regulation 3.10A where the applicant is likely to be required to quote an OTN or regulation 3.10B where the applicant is likely to be permitted to quote an OTN.

If more than one of the above circumstances for quotation of an OTN applies to the applicant, the application need only be accompanied by the information and documents relevant to one of the particular circumstances. In considering an application, the Clean Energy Regulator needs adequate information to identify the applicant and to assess whether the applicant is likely to be required or permitted to quote an OTN.

To minimise duplication of effort and compliance costs, these requirements are consistent with the requirements for registration under the NGER Scheme. These requirements are also consistent with those for natural gas (see Division 3 of the CE Regulations).

**7 to 13 Subparagraph 3.7(2)(b)(i), paragraph 3.7(2)(d) and subparagraphs 3.7(2)(e)(i), 3.7(2)(g)(i), 3.9(2)(b)(i), 3.10(1)(b)(i) and 3.10(2)(b)(i)**

Existing regulations 3.7-3.10 relating to OTN applications for natural gas are amended to ensure their consistency with the new regulations for LPG and LNG and to take into account amendments to the NGER Act.

**14 At the end of Subdivision 4.1 of Division 4 of Part 3**

Item 14 inserts new regulations 3.10A and 3.10B at the end of Subdivision 4.1 of Division 4 of Part 3 of the regulations. The amendments set out the additional information and documents that must accompany an application for an OTN.

Regulation 3.10A

Regulation 3.10A sets out the additional information and documents that must accompany an application for an OTN on the basis that the applicant is likely to be required to quote an OTN to a supplier of LPG or LNG in relation to a large LPG or LNG consuming facility. The requirements are consistent with those for natural gas (see Division 3 of the CE Regulations).

Regulation 3.10B

Regulation 3.10B sets out the additional information and documents that must accompany an application for an OTN on the basis that the applicant is likely to be permitted to quote an OTN to a supplier of LPG or LNG for LPG or LNG used as a feedstock. The requirements are consistent with those for natural gas (see Division 3 of the CE Regulations).

**15 Subparagraphs 3.12(5)(c)(i) and 3.14(3)(c)(i)**

Item 15 amends regulations 3.12 and 3.14 to ensure consistency of the use of the term ‘amount’ rather than ‘quantity’ in the regulations.

## **16 At the end of Division 4 of Part 3**

Item 16 inserts new subdivision 4.4 which sets out the conditions for OTN quotation and acceptance of OTN quotation.

### Regulation 3.19A

Regulation 3.19A makes quotation of an OTN mandatory under subsection 58AA(1)(c) of the CE Act where the supply of LPG or LNG is for use in the operation of a large LPG or LNG consuming facility. This means that large LPG or LNG consuming facilities will be responsible for their emissions rather than the LPG or LNG supplier. This is consistent with the treatment of large natural gas consuming facilities.

A facility will become a large LPG or LNG consuming facility if it passes the threshold test in a financial year which began on or after 1 July 2011.

A facility passes the threshold test for a financial year if the total amount of covered emissions from the operation of the facility during the financial year from the combustion of LPG or LNG has a carbon dioxide equivalence (CO<sub>2</sub>-e) of at least 25,000 tonnes.

However, a facility will not be a large LPG or LNG consuming facility in a particular financial year if the Clean Energy Regulator decides that the facility is taken not to be a large LPG or LNG consuming facility under regulation 3.19C, or the facility ceases to be a large LPG or LNG consuming facility in accordance with regulation 3.19E.

### Regulation 3.19B

Regulation 3.19B provides that the operator of a large LPG or LNG consuming facility may apply to the Clean Energy Regulator for the facility to cease to be a large LPG or LNG consuming facility when a facility has a 'one-off year' in which its emissions from LPG or LNG are unusually high and it passes the large LPG or LNG consuming facility threshold test (outlined in regulation 3.19A(4)). The person that can apply would generally be the person who would have a liability for the direct emissions from the facility.

The application must provide information demonstrating that that the facility did not pass the threshold test (outlined in new regulation 3.19A(4)) in the 2 financial years preceding the one-off year and is unlikely to pass the threshold test in the 2 financial years following the one-off year.

### Regulation 3.19C

Regulation 3.19C outlines the process for the Clean Energy Regulator to decide whether a facility will cease to be a large LPG or LNG consuming facility for a one-off year application.

If the Clean Energy Regulator makes a decision under this regulation then the facility is taken not to be a large LPG or LNG consuming facility on the 1 July the facility would have been a large LPG or LNG consuming facility. If the Clean Energy Regulator is not satisfied of the matters mentioned above in this regulation, then the Clean Energy Regulator must refuse the application. The Clean Energy Regulator will notify the application of its decision on the application in writing.

#### Regulation 3.19D

Regulation 3.19D provides that a person may apply to the Clean Energy Regulator to have a facility taken to cease to be a large LPG or LNG consuming facility where there are diminishing emissions from LPG or LNG use at the facility. The person that may apply is the person that had a preliminary emissions number in relation to the facility in the financial year before the application is given to the Clean Energy Regulator. This could be either the person who would have a liability for the direct emissions from the facility or in some circumstances a different person who had quoted an OTN for LPG or LNG used at the facility.

A person may apply under this regulation when a facility has triggered the threshold of 25,000 tonnes of CO<sub>2</sub>-e from LPG or LNG use and is already a large LPG or LNG consuming facility and where the facility has dropped below the threshold of 25,000 tonnes of CO<sub>2</sub>-e in a financial year and it is likely that the facility's emissions will remain below this threshold in future years.

#### Regulation 3.19E

Regulation 3.19E outlines the process for the Clean Energy Regulator to decide whether a facility will cease to be a large LPG or LNG consuming facility where a diminishing emissions application has been made under regulation 3.19D.

If the Clean Energy Regulator decides that the facility is taken not to be a large LPG or LNG consuming facility, the facility is taken to cease being a large LPG or LNG consuming facility on 30 June in the financial year in which the application was made. If the Clean Energy Regulator is not satisfied of the conditions for the application as detailed in this Regulation then it must refuse the application. The Clean Energy Regulator will notify the application of its decision on the application in writing.

#### Regulation 3.19F

Regulation 3.19F establishes the conditions for subsection 58AB(1)(c) of the CE Act for voluntary OTN quotation for LPG or LNG.

Voluntary OTN quotation will be allowed where the recipient is likely to use some or all of the amount of LPG or LNG as feedstock, where the Clean Energy Regulator has granted the recipient that status of an approved recipient for the financial year in accordance with regulation 3.19G, or where the recipient is a large user of LPG or LNG.

A person is a large user of LPG or LNG if they are required to quote their OTN because they are the recipient of LPG or LNG for use at a large LPG or LNG consuming facility. Such a person may quote an OTN to their supplier to assume liability for any other LPG or LNG supplied to that person for use at other facilities that are not large LPG or LNG consuming facilities. This approach allows large users of LPG or LNG to manage all their liability for LPG or LNG, as long as one facility for which they receive LPG or LNG was a large LPG or LNG consuming facility.

### Regulation 3.19G

Regulation 3.19G enables the operator of a facility to apply to the Clean Energy Regulator to be an approved recipient to quote the recipient's OTN in relation to a supply.

An approved recipient can quote an OTN for all LPG or LNG supplied to them by a gaseous fuel supplier. This allows entities that do not yet qualify as a 'large LPG or LNG user' to quote an OTN if a facility that they operate is likely to exceed the large LPG or LNG consuming facility threshold. This might occur, for example, where an entity expects to permanently increase production at an existing facility or where they are setting up a new facility.

The Clean Energy Regulator may decide that the applicant is an approved recipient for a financial year specified in the application, if the Clean Energy Regulator is satisfied that a facility is likely to be under the operational control of the applicant or the person identified as having operational control in the application in the financial year, the applicant is currently or likely to be supplied LPG or LNG by a gaseous fuel supplier, and it is likely that the total amount of covered emissions from the operation of the facility during the financial year from the combustion of LPG or LNG will have a CO<sub>2</sub>-e of at least 25,000 tonnes.

The Clean Energy Regulator will notify the application of its decision on the application in writing.

### Regulation 3.19H

Regulation 3.19H allows the Clean Energy Regulator, by written notice, to require an applicant to provide further information or documents in connection with an application for a facility to cease being a large LPG or LNG consuming facility for a one-off year (regulation 3.19C), an application for a facility to cease being a large LPG or LNG consuming facility because of diminishing emissions (regulation 3.19E), or an application to be an approved recipient (regulation 3.19G).

If the applicant fails to provide the requested information or documents the Clean Energy Regulator may, by written notice given to the applicant, refuse to consider the application, or refuse to take any action, or any further action, in relation to the application.

## Regulation 3.19J

Regulation 3.19J makes it mandatory for a gaseous fuel supplier to accept an OTN quotation when the OTN holder, by written notice given to the gaseous fuel supplier, declares that the quotation is under section 58 AB or section 60AB of the CE Act for an amount of LPG or LNG the OTN holder will use as feedstock.

### **17 Subregulation 3.37(2) (item 1)**

Item 17 amends subregulation 3.37(2) (item 1), which specifies the opt-in amount in relation to a designated opt-in person (DOIP). The amended subregulation clarifies the scope of fuel liability for a DOIP who has opted-in to the carbon pricing mechanism for the fuel use of their GST group (a grouping arrangement available under taxation legislation).

### **18 Regulation 3.50 (heading)**

Item 18 amends the heading of regulation 3.50 to clarify that a requirement to notify the Clean Energy Regulator changes is not limited to only changes related to fuel tax credits.

### **19 Subregulation 14.1A(1)**

Item 19 amends subregulation 14.1A(1) to ensure that, where notice of an intention to quote an OTN for a supply of LPG or LNG is given, the appropriate records must be kept.

### **20 and 21 Subregulation 14.3(1) and subregulation 14.3(3)**

Items 20 and 21 amends subregulations 14.3(1) and 14.3(3) to ensure that, where an OTN quotation is accepted for a supply of LPG or LNG, the appropriate records must be kept.

### **22 After regulation 14.3**

Item 22 inserts subregulation 14.4, which requires an importer, producer or manufacturer of LPG and the recipient of LPG to retain a copy of the statutory declaration required under new subregulation 3.5F(c)(ii) for a period of five years after it is made.

### **23 After regulation 21.1A**

Item 23 inserts regulation 21.1B to ensure that a decision by the Clean Energy Regulator to disqualify a person from bidding in an auction of carbon units for up to five years, on the grounds to be specified in the *Clean Energy (Auction of Carbon Units) Determination 2013*, is a reviewable decision. The Determination will be made in mid-2013. The review of a decision to disqualify an eligible bidder from participating in the auction of carbon units is intended to cover both the decision to disqualify the person from participating in auctions and the period of disqualification imposed.

## **24 After Part 21**

Item 24 inserts new regulation 23.1 in new part 23. Regulation 23.1 specifies the ‘kinds of amounts’ payable by the Commonwealth to a person that the Clean Energy Regulator may set off against certain debts that are owed to it under the CE Act. The power to set off amounts is provided in sections 137 and 215 of the CE Act, and applies to amounts owed in relation to a unit shortfall charge (section 137), and amounts owed in relation to the relinquishment requirements in section 212 (section 215) as well as the late payment penalties associated with each of those provisions.

The kinds of amounts specified are amounts owed under:

- section 116, the buy-back of carbon units;
- section 140, a refund of an overpaid unit shortfall charge or late payment penalty;
- section 216, the refund of a relinquishment penalty or late payment penalty; and
- section 268(4), the refund of a penalty where an infringement notice has been withdrawn.

## **25 After paragraph 309(2)(a) of Schedule 1**

Item 25 inserts a new paragraph under subclause 309(2). The new paragraph inserts a new sub-activity to include the production of lead metal with a concentration of lead of at least 99.5 per cent but less than 99.97 per cent.

## **26 Subclause 309(5) of Schedule 1**

Item 26 updates subclause 309(1) to clarify that the existing sub-activity of the production of lead metal of saleable quality has a concentration of lead of at least 99.97 per cent.

## **27 After paragraph 309(5)(a) of Schedule 1**

Item 27 inserts a new paragraph under subclause 309(5) which clarifies that lead metal of saleable quality with a concentration of lead of at least 99.97 per cent is not eligible as a basis of issue if it is produced from lead metal of saleable quality with a concentration of lead of at least 99.5 per cent but less than 99.97 per cent.

## **28 After subclause 309(5) of Schedule 1**

Item 28 inserts a new subclause after subclause 309(5) to include an additional basis of allocation for the activity of integrated lead and zinc. This subclause outlines that the basis of issue is per tonne of saleable lead metal that has a concentration of lead of equal to or greater than 99.5 per cent but less than 99.97 per cent.

The sub-activity is not satisfied through the undertaking of lead smelting on a stand-alone basis such that the outputs do not include zinc-bearing materials. The sub-activity baseline of lead metal of saleable quality with a concentration of lead of at least 99.97 per cent production is only applicable where the basis of issue is produced as part of the integrated lead and zinc activity.

For the integrated lead and zinc activity, an amount of lead metal can only be used to calculate one allocation of free carbon units. For example, lead metal of saleable quality with a concentration of lead of at least 99.97 per cent cannot be counted towards an allocation of free carbon units as lead metal of saleable quality with a concentration of lead of at least 99.5 per cent but less than 99.97 per cent.

### **29 Subclause 401(1) of Schedule 1 (table item 2.3)**

Item 29 updates the table in Part 4 of Schedule 1 with allocative baselines for assistance that relate to the integrated production of lead and zinc. The table clarifies that the existing sub-activity of the production of lead metal of saleable quality has a concentration of lead of at least 99.97 per cent. It includes the allocative baselines for the new sub-activity of the production of lead metal with a concentration of lead of at least 99.5 per cent but less than 99.97 per cent. The table retains the existing description of allocative baselines for the zinc in fume sub-activity.

The baselines are for the direct emissions and electricity use for the activity in clause 309.

The formula for calculating the number of free carbon units in Part 9 of Schedule 1 to the regulations applies the baselines as outlined in the table.

### **30 After subclause 702(1B) of Schedule 1**

Item 30 inserts new subclauses 701(1C) and (1D) after subclause 702(1B), which provides for an extension to the deadline for the submission of applications to the Clean Energy Regulator for assistance to entities undertaking the production of integrated lead and zinc activity described in Division 9 of Part 3. Applications may be given to the Clean Energy Regulator no later than 30 June 2013.

### **31 Amendments of listed provisions—date and day**

Items 31 replaces existing references to ‘date’ or ‘dates’ throughout the regulations with ‘day’ or ‘days’.

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

### **32 After subregulation 22X(1A)**

Item 32 inserts a new subclause 22X(1B), which provides for an extension to the deadline for the receipt of applications to the Clean Energy Regulator for assistance to entities undertaking the production of integrated lead and zinc activity described in Part 9 of Schedule 6. Applications may be given to the Clean Energy Regulator before 1 July 2013.

### **33 After paragraph 623(1)(c) of Schedule 6**

Item 33 inserts a new paragraph under subclause 623(1) to include a new sub-activity for the production of lead metal with a concentration of lead of at least 99.5 per cent but less than 99.97 per cent.

### **34 Subclause 625(1) of Schedule 6**

Item 34 updates subclause 625(1) to clarify that the existing sub-activity of the production of lead metal of saleable quality has a concentration of lead of at least 99.97 per cent.

### **35 After paragraph 625(1)(a) of Schedule 6**

Item 35 adds a new paragraph under subclause 625(1) to clarify that lead metal of saleable quality with a concentration of lead of at least 99.97 per cent is not produced from lead metal of saleable quality with a concentration of lead of at least 99.5 per cent but less than 99.97 per cent.

### **36 After subclause 625(1) of Schedule 6**

Item 36 inserts a subclause after subclause 625(1), which adds a new sub-activity electricity baseline for calculating the amount of a liable entity's partial exemption for the production of lead metal of saleable quality with a concentration of lead of at least 99.5 per cent but less than 99.97 per cent. The baseline provides a partial exemption of 0.371 megawatt hours per tonne of lead metal of saleable quality with a concentration of lead of at least 99.5 per cent but less than 99.97 per cent.

To be eligible for assistance, the lead metal of saleable quality with a concentration of lead of 99.5 per cent but less than 99.97 per cent must have been produced by carrying on the integrated lead and zinc activity (as defined under Part 9 of Schedule 6) to be eligible as a relevant product. The sub-activity is not satisfied through the undertaking of lead smelting on a stand-alone basis such that the outputs do not include zinc-bearing materials.

For the integrated lead and zinc activity, an amount of lead metal can only be used to calculate one allocation of partial exemptions. For example, lead metal of saleable quality with a concentration of lead of at least 99.97 per cent cannot be counted towards an allocation of partial exemptions as lead metal of saleable quality with a concentration of lead of at least 99.5 per cent but less than 99.97 per cent.

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

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

### **Clean Energy Legislation Amendment Regulation 2013 (No. 1)**

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 Legislation Amendment Regulation 2013 (No. 1)**

The Regulation:

- provides necessary details that allow compliance with, and administration of, the *Clean Energy Act 2011* in relation to coverage of non-transport liquefied petroleum gas (LPG) and liquefied natural gas (LNG) under the carbon pricing mechanism;
- includes, within the existing emissions-intensive trade-exposed activity of integrated lead and zinc production, the production of lead metal with a concentration of lead of lead of at least 99.5 per cent as a sub-activity eligible for assistance in the form of free carbon units and partial exemption certificates (PECs);
- extends the deadline for 2012-13 applications for free carbon units to be provided to the Clean Energy Regulator from 31 October 2012 to 30 June 2013 for the integrated production of lead and zinc activity;
- extends the deadline for 2013 PEC applications to be provided to the Clean Energy Regulator before 1 April 2013 to before 1 July 2013 for the integrated production of lead and zinc activity; and
- makes minor and technical amendments to the CE Regulations.

#### **Human rights implications**

The Regulation engages the right to privacy and reputation, at least to the extent that it applies to the collection of personal information by the Clean Energy Regulator. The Regulation makes certain persons who enter LPG or LNG for home consumption or are supplied LPG or LNG liable under the Act and requires them to provide personal information for the purpose of identification of applicants under the various schemes established by the Act. The Regulation also requires certain persons to provide personal information when applying for free carbon units and PECs.

Although, in some circumstances some of the contact details may already be publicly available, the contact details of these individuals will not be publicly disclosed. The individual's information will be regulated and treated in accordance with the secrecy provisions set out in the *Clean Energy Regulator Act 2011* and the *Privacy Act 1988*.

### **Conclusion**

This Legislative Instrument is compatible with human rights as it does not raise any human rights issues.

**Greg Combet**

**Minister for Climate Change, Industry and Innovation**