

EXPLANATORY STATEMENT

Select Legislative Instrument 2013 No. 79

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 (Various Measures) Regulation 2013

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 (Various Measures) Regulation 2013* (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:

- remove one gas processing plant in Schedule 2 of the CE Regulations;
- list 16 additional gas processing plants in Schedule 2 of the CE Regulations;
- allow for voluntary OTN quotation for uses of LPG and LNG that do not result in emissions, in addition to use as a feedstock; and
- provide a netted-out number in situations where a producer or importer uses LPG or LNG at their own facility that is also liable under the direct emitter provisions of the CE Act.

The Regulation also amends the CE Regulations and the RET Regulations to make a minor change to the description of the production of nickel emissions-intensive trade-exposed (EITE) activity and extend the Jobs and Competitiveness Program (the Program) and Partial Exemption Certificate (PEC) application deadlines for the activity.

Amendments to the treatment of liquefied petroleum gas and liquefied natural gas

Part 3, Division 3A of the CE Act sets out the requirements for liability to arise for LPG and LNG used for non-transport purposes from 1 July 2013. Default liability under the carbon pricing mechanism rests with the person that would pay duty on the fuel when it is entered for home consumption. The CE Act further allows for ‘fine tuning’ of liability where the general rules result in liability being applied in situations when it should not, such as cases where liability may be applied twice.

The Regulation enables a person that is liable for an amount of LPG or LNG under sections 36B or 36C of the CE Act to reduce their liability by ‘netting-out’ any amount that the person is also directly liable for from the combustion of that LPG or LNG. This ensures that liability is not applied twice in these situations. The Regulation also makes other minor amendments including enabling a person that is liable for an amount of LPG or LNG to net-out an amount where its use does not result in emissions.

Amendments relating to natural gas supply pipelines

Part 3, Division 3 of the CE Act applies liability to a natural gas supplier where they supply natural gas through a ‘natural gas supply pipeline’ to a recipient for use. The CE Act provides for certain supplies of natural gas to be excluded in the Regulations. This exclusion is achieved by excluding some pipelines from the definition of ‘natural gas supply pipelines’.

The Regulation amends Schedule 2 to list an additional 16 gas processing plants. Anything upstream of a connection point or (if there is no connection point) an exit flange on a pipeline conveying natural gas from the gas processing plants listed in Schedule 2 would not be considered a ‘natural gas supply pipeline’. The Regulation also removes one gas processing plant as it is no longer in operation.

Amendments to the Jobs and Competitiveness Program

Part 7 of the CE Act provides for the establishment of the the Program to support industries conducting EITE activities. The administrative framework for this is provided under the CE Regulations. The RET Act also provides for assistance in the form of 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 existing EITE activity of the production of nickel in the CE Regulations and RET Regulations by reducing the minimum nickel concentration in the definition of nickel sulphide concentrate from 11 per cent to 6.5 per cent. The Regulation makes associated administrative amendments to the deadline for applications for free carbon units and PECs to allow entities undertaking these activities to submit applications in respect of the current years if the changes described above come into effect.

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 production of nickel activity in accordance with these principles.

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 1 to 10, 17, 18 and 19 of the Regulation commence on the day after it is registered on the Federal Register of Legislative Instruments. Items 11 to 16 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. DCCEE also consulted on the development of the regulations for coverage of LPG and LNG under the carbon pricing mechanism.

The Department of Industry, Innovation, Climate Change, Science, Research and Tertiary Education (the Department) provided a short consultation paper to the LPG and LNG industry regarding the proposal in the amendment regulations to allow for an additional netted-out number for importers or producers of LPG or LNG where the importer or producer is also liable under another division of the CE Act. The Department received a submission in response from the peak LPG and LNG stakeholder group.

Amendments relating to natural gas supply pipelines

In late 2012, DCCEE called for proposals to make amendments to the list of gas processing plants provided in Schedule 2 of the CE Regulations. Following the assessment of the proposals, The Department then exposed a draft of the amendments to the CE Regulations on 12 April 2013 and received six submissions.

Officers of the Department have also had numerous discussions with the proposal proponents, the wider industry and the Clean Energy Regulator in the development of these amendment regulations.

Amendments to the Jobs and Competitiveness Program

Since 2011, the Government 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 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 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 production of nickel activity included in the CE Regulations and the RET Regulations.

The Department has consulted with all nickel producers regarding the changes to the nickel activity and the application deadline extension throughout the process of developing the Regulation.

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

Statement of Compatibility with Human Rights

A statement of compatibility with human rights for the purposes of Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011* is set out 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 (Various Measures) Regulation 2013*

Sections 1 to 4

Commencing the day after registration

Section 1 – Name of Regulation

Section 1 provides that the name of the Regulation is the *Clean Energy Legislation Amendment (Various Measures) Regulation 2013* (the Regulation).

Section 2 – Commencement

Section 2 provides that sections 1-4 and Schedule 1, items 1 to 10, 17, 18 and 19 of the Regulation commence on the day after it is registered on the Federal Register of Legislative Instruments. Items 11 to 16 of Schedule 1 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

Amendments commencing on the day after registration

Clean Energy Regulations 2011

Item 1

Item 1 repeals existing regulation 3.5G and replaces it with new regulations 3.5G, 3.5H and 3.5J. Existing regulation 3.5G allows importers, manufacturers and producers of liquefied petroleum gas (LPG) or liquefied natural gas (LNG), as well as Obligation Transfer Number (OTN) holders, to reduce their liability through use of a netted-out number to account for any LPG or LNG used as a feedstock where they would otherwise have a liability for that LPG or LNG.

The existing regulation 3.5G has been split into three separate regulations to provide greater clarity regarding the netted-out numbers that can be used by importers, manufacturers and producers and OTN holders, respectively. The new regulations 3.5G, 3.5H and 3.5J also include additional netted-out numbers that may be used by importers, manufacturers and producers and

OTN holders.

Regulation 3.5G

Regulation 3.5G enables importers of LPG and LNG to reduce their liability through the use of a netted-out number to account for any LPG or LNG that they use in a way that does not produce greenhouse gas emissions, in addition to the existing netted-out number for use of LPG or LNG as a feedstock.

Regulation 3.5G also enables a person to net-out an amount of LPG or LNG from their liability under section 36B of the CE Act where that amount of LPG or LNG also counts towards a direct emitter liability when it is combusted at the person's liable facility.

Regulation 3.5H

New regulation 3.5H enables manufacturers and producers of LPG or LNG to reduce their liability through the use of a netted-out number to account for any LPG or LNG that they use in a way that does not produce greenhouse gas emissions, in addition to the existing netted-out number for use of LPG or LNG as a feedstock.

Regulation 3.5H also enables a person to net-out an amount of LPG or LNG from their liability under section 36C of the CE Act where that amount of LPG or LNG also counts towards a direct emitter liability when it is combusted at the person's liable facility.

Regulation 3.5J

New regulation 3.5J enables OTN holders to reduce their liability through the use of a netted-out number to account for any LPG or LNG used in a way that does not produce greenhouse gas emissions, in addition to the existing netted-out number for use of LPG or LNG as a feedstock.

Item 2

Item 2 repeals subregulations 3.10B(2) and (3) of the *Clean Energy Regulations 2011* that set out the information that must be included in an application for an OTN for LPG or LNG that is used as a feedstock. These subregulations are replaced by new subregulations 3.10B(2), (3), (4) and (5) that set out the information that must be included in an application for an OTN for LPG or LNG that is used as a feedstock or in such a way as to not emit any greenhouse gases.

Items 3 and 4

Items 3 and 4 amend existing subregulations 3.12(3) and 3.19B(3) to allow the Clean Energy Regulator to specify a date by which applications to be taken to not be a large natural gas, LPG or LNG consuming facility must be provided to the Clean Energy Regulator.

Currently, these applications must be made at least 90 days before the day on which the facility would become a large natural gas, LPG or LNG consuming facility. However, it may not be possible for applicants to comply with this requirement in all situations and the Clean Energy

Regulator may want to specify an alternative later date if it considers this to be justified in the circumstances.

Item 5

Item 5 replaces a reference in regulation 3.19C to natural gas with a reference to LPG or LNG, as regulation 3.19C relates to large LPG or LNG consuming facilities and not large natural gas consuming facilities.

Item 6

Item 6 amends regulation 3.19F to allow for voluntary OTN quotation where the LPG or LNG is used in a way that does not produce greenhouse gas emissions.

Item 7

Item 7 amends regulation 3.19J to require a supplier of LPG or LNG to accept an OTN quotation where the OTN is being quoted on the basis that the LPG or LNG is used in a way that does not produce greenhouse gas emissions.

Item 8

Item 8 amends subclause 348(5) of Schedule 1 (definition of *intermediate nickel products*) to change the minimum concentration of nickel in the definition of nickel sulphide concentrate (NiS) from 11 per cent to 6.5 per cent.

Items 9 and 10

Items 9 and 10 amend subclause 702(1A) of Schedule 1 and insert new subclauses 702(1E) and 702(1F) to allow for applications for free carbon units for the production of nickel to be given to the Clean Energy Regulator no later than 31 July 2013.

Amendments commencing on 1 July 2013

Item 11

Item 11 amends the note to Schedule 2 to clarify that Schedule 2 should be read in reference to regulation 1.8 rather than subregulation 1.8 (4).

Item 12

Item 12 removes North Paaratte gas processing plant from Schedule 2 as it is no longer in operation.

Item 13

Item 13 amends Schedule 2 to list an additional three gas processing plants located in Victoria.

Item 14

Item 14 amends Schedule 2 to list an additional nine gas processing plants located in Queensland.

Item 15

Item 15 amends Schedule 2 to list an additional three gas processing plants located in Western Australia.

Item 16

Item 16 amends Schedule 2 to list an additional gas processing plant located in the Northern Territory.

Amendments commencing on the day after registration

Renewable Energy (Electricity) Regulations 2001

Items 17 and 18

Items 17 and 18 amend subregulation 22X(1A) and inserts new subregulation 22X(1C) to allow for applications for Partial Exemption Certificates for the production of nickel to be given to the Clean Energy Regulator before 1 August 2013.

Item 19

Item 19 amends subclause 740(2) of Schedule 6 (definition of intermediate nickel products) to change the minimum concentration of nickel in the definition of nickel sulphide concentrate (NiS) from 11 per cent to 6.5 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 (Various Measures) Regulation 2013

This Regulation is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Clean Energy Legislation Amendment (Various Measures) Regulation 2013

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;
- amends Schedule 2 of the CE Regulations to list 16 additional gas processing plants and remove one; and
- amends the CE Regulations and the RET Regulations to make a minor change to the description of the production of nickel emissions-intensive trade-exposed activity and extend the Jobs and Competitiveness Program and Partial Exemption Certificate application deadlines for the activity from 31 May 2013 to 31 July 2013.

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 because it does not engage those rights or, to the extent that it may limit human rights, those limits are reasonable, necessary and proportionate.

Greg Combet

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