EXPLANATORY STATEMENT

**Select Legislative Instrument 2013 No. 104**

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

*National Greenhouse and Energy Reporting Act 2007*

*National Greenhouse and Energy Reporting Amendment (LNG, LPG, Opt-in Scheme and Other Measures) Regulation 2013*

Section 77 of the *National Greenhouse and Energy Reporting Act 2007* (the NGER Act) provides, in part, that the Governor General may make regulations required or permitted by the NGER Act, or necessary or convenient to be prescribed for carrying out or giving effect to the NGER Act. The NGER Act and its supporting legislative instrument, the *National Greenhouse and Energy Reporting Regulations 2008* (the NGER Regulations) provide a data and accounting framework in relation to greenhouse gas emissions, energy consumption and energy production. This framework underpins the carbon pricing mechanism.

The *National Greenhouse and Energy Reporting Amendment (LNG, LPG, Opt-in Scheme and Other Measures) Regulation 2013* (the Regulation) amends the *National Greenhouse and Energy Reporting Regulations 2008* (the NGER Regulations).

The NGER Regulations are amended to include specific reporting requirements for new categories of liable entities under the carbon pricing mechanism, introduced via amendments to the *Clean Energy Regulations 2011*. These new liable entities are:

* importers, manufacturers, producers and Obligation Transfer Number (OTN) holders of non-transport LNG and LPG;
* participants in the liquid fuel Opt-in Scheme; and
* persons liable for their own use of natural gas.

The Regulation also amends the NGER Regulations to make minor changes to specify the methods for measuring amounts of natural gas for the purposes of calculating the potential emissions embodied in them.

*Amendments to the reporting requirements of entities liable for amounts of non-transport Liquefied Natural Gas and Liquefied Petroleum Gas*

The *Clean Energy Legislation Amendment Act 2012* amended the *Clean Energy Act 2011* (the CE Act) to apply the carbon price to non-transport Liquefied Natural Gas (LNG) and Liquefied Petroleum Gas (LPG), with effect from 28 June 2012.

A person can be a liable entity under the carbon pricing mechanism in respect of the potential greenhouse gas (GHG) emissions embodied in an amount of LNG or LPG that: has been imported, that has been manufactured or produced in Australia, that the person quoted their Obligation Transfer Number (OTN) for when it was supplied to them and in certain other circumstances.

The terms ‘import’, ‘manufacture’ and ‘produce’ should be taken to have the same meanings as for excise and customs purposes. That is, fuel which is imported into Australia and blended with fuel that was manufactured in Australia should be considered to have been manufactured in Australia.

Persons who are liable entities under the CE Act are subject to the liability and reporting provisions of that Act and the NGER Act. In particular, they must submit reports under sections 22A and 22AA of the NGER Act. The information required to be set out in these reports is specified in the NGER Regulations.

The Regulation amends the NGER Regulations to specify the details that persons who are liable entities in respect of the potential GHG emissions embodied in an amount of LPG or LNG must report under sections 22A and 22AA of the NGER Act. These reporting requirements are similar to the existing reporting requirements of other entities under sections 22A and 22AA of the NGER Act. They include reportage of the total amount of LNG and LPG that was imported, and the total amount of LNG and LPG that was manufactured or produced.

*Amendments to the reporting requirements of entities liable under the Opt-in Scheme*

The Opt-in Scheme, inserted into the CE Act in June 2012 via Division 7, gives certain fuel users the option to manage their fuel tax liability through the carbon pricing mechanism, instead of through the fuel tax system.

The Opt-in Scheme requires an entity to apply to the Clean Energy Regulator to be declared a Designated Opt-in Person (DOIP). A DOIP is a liable entity under the CE Act and is thus subject to the liability and reporting provisions of that Act and the NGER Act for fuel that is opted in, referred to as the ‘opt-in amount’.

The Regulation amends the NGER Regulations to stipulate the details that a DOIP is required to include in reports required by sections 22A and 22AA of the NGER Act in relation to the opt-in amount.

*Amendments to the reporting requirements of entities liable as end users of natural gas*

Recent amendments to the *Clean Energy Regulations 2011* include a provision to make an end user of natural gas liable for the potential emissions embodied in the gas they use if no other person is liable for that gas under sections 33, 35, 35A or 20-25 of the CE Act.

The Regulation amends the NGER Regulations to stipulate the details that liable end users of natural gas are required to include in the reports required by sections 22A and 22AA of the NGER 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*.

The Regulation commences on 1 July 2013.

**Consultation**

The Department of Industry, Innovation, Climate Change, Science, Research and Tertiary Education (the Department) published a short consultation paper regarding the amendments and outlining the additional reporting requirements for importers and manufacturers of LPG or LNG and other liable entities. This consultation paper and a draft of the amendments were published on the Department’s website on 12 April 2013, as well as emailed to relevant stakeholders. Stakeholders were given almost 4 weeks, until 9 May 2013, to respond.

The Department invited comment on the consultation paper and thedraft amendments during a teleconference with officers of the Department held on 7 May 2013. Written comments were also invited to be submitted by 9 May 2013.

The purpose of the duel teleconference and written submission consultation was for the Department to seek views on the amendment’s consistency with reporting requirements already in the NGER Regulations and on the amendment’s practical operation and application.

Eight parties participated in the teleconference with the Department to discuss the amendments. These were: Santos Limited, Australian Petroleum Production and Exploration Association Limited; Origin Energy Limited; DBP Transmission Limited; Chevron Limited; Gas Energy Australia; Arrow Energy Limited and Elgas Limited. In addition, three written submissions were received from Gas Energy Australia, Horizon Power and Origin Energy.

*Amendments to the reporting requirements of entities liable for amounts of non-transport Liquefied Natural Gas and Liquefied Petroleum Gas*

The addition of specific reporting requirements for non-transport LPG and LNG was in response to the coverage of these fuels under the carbon pricing mechanism via amendments to the CE Act and CE Regulations in 2012. 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.

Minor issues were raised in stakeholder submissions on these amendments following consultation in 2013. These issues were resolved in the final draft of the Regulation.

*Amendments to the reporting requirements of entities liable under the Opt-in Scheme*

The addition of specific reporting requirements for participants in the Opt-in Scheme was in response to the establishment of the Opt-in Scheme and Designated Opt-in Persons (DOIPs) as liable entities via amendments to the CE Act and CE Regulations.

Minor issues were raised in stakeholder submissions on these amendments following consultation in 2013. These issues were resolved in the final draft of the Regulation.

*Amendments to the reporting requirements of entities liable as end-users of natural gas*

The addition of specific reporting requirements for entities liable as end-users of natural gas was in response to amendments to the CE Act which made end users of natural gas liable for the potential emissions embodied in the gas they use, if no other person is liable for that gas under other specified sections of the CE Act. This was necessary to account for situations where no person would be liable for the potential emissions, due to the CE Act definitions of supply and withdrawal not being able to be met.

Minor issues were raised in stakeholder submissions on these amendments following consultation in 2013. These issues were resolved in the final draft of the Regulation.

**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 77 of the *National Greenhouse and Energy Reporting Act 2007*

**Attachment A**

**Details of the *National Greenhouse and Energy Reporting Amendment (LNG, LPG, Opt-in Scheme and Other Measures) Regulation 2013***

**Section 1 – Name of Regulation**

Section 1 provides that the name of the Regulation is the *National Greenhouse and Energy Amendment (LNG, LPG, Opt-in Scheme and Other Measures) Regulation 2013* (the Regulation).

**Section 2 – Commencement**

Section 2 provides that this Regulation commences on 1 July 2013.

**Section 3 – Authority**

Section 3 specifies that the Regulation is made under the *National Greenhouse and Energy Reporting Act 2007.*

**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**

***National Greenhouse and Energy Reporting Regulations 2008***

**Items 1 and 2**

Items 1 and 2 repeal the existing definitions of liquefied natural gas and liquefied petroleum gas and replace them with new definitions, which are identical except for their inclusion of the acronyms LNG and LPG.

New definitions for the terms ‘GST group’ and ‘GST joint venture’ are introduced.

**Items 3 and 4**

Items 3 and 4 repeal the existing definition of obligation transfer number and replace it with a new definition, which is identical except for the inclusion of the acronym OTN. Item 4 also introduces a definition of specified taxable fuel, which has the meaning given by the regulation 3.30 of the *Clean Energy Regulations 2011.*

**Items 5 and 6**

Items 5 and 6 amend regulation 4.19 to clarify that persons need not report information about a generating unit producing electricity for the facility if the generating unit’s capacity is 0.5 megawatts of electricity or less, and the generating unit generates 100 000 kilowatt hours or less of electricity in a reporting year.

**Item 7**

Item 7 amends regulation 4.32F to clarify that, in every instance where an amount of natural gas, LNG or LPG is reported under the NGER Regulations, that amount is to be measured in accordance with the *National Greenhouse and Energy Reporting (Measurement) Determination 2008* (the Measurement Determination), and stated in an amount of gigajoules.

**Item 8**

Item 8 amends regulation 4.32K(2) which sets out the information that must be included in a report under section 22A. Item 8 introduces a requirement that persons report the methods in the Measurement Determination that were used to calculate the total amount of natural gas (in gigajoules) supplied by the person that is attributable to the provisional emissions number.

**Item 9**

Item 9 repeals existing regulation 4.32L and replaces it with an amended regulation 4.32L, and new regulations 4.32LA, 4.32LB and 4.32LC.

The existing regulation 4.32L sets out what a person who has a provisional emissions number for the reporting year under section 35 or 36 of the *Clean Energy Act 2011* must report in a report under section 22A of the *National Greenhouse and Energy Reporting Act 2007*. Sections 35 and 36 of the *Clean Energy Act 2011* create liability for the supply of natural gas to a person who quotes the person’s OTN and for supply of natural gas to a person who misuses the person’s OTN, respectively.

The existing regulation 4.32L has been amended to include, in addition to the above requirements, what a person who has a provisional emissions number for the reporting year under section 36D or 36E of the *Clean Energy Act 2011* must report in a report under section 22A of the *National Greenhouse and Energy Reporting Act 2007*. Sections 36D and 36E of the *Clean Energy Act 2011* create liability for the supply of LPG or LNG to a person who quotes the person’s OTN and for the supply of LPG or LNG to a person who misuses the person’s OTN, respectively.

Regulation 4.32LA

New regulation 4.32LA sets out what a person who has a provisional emissions number for the reporting year under section 35B of the *Clean Energy Act 2011* must report in a report under section 22A of the *National Greenhouse and Energy Reporting Act 2007*. Section 35B of the *Clean Energy Act 2011* creates liability for a person for the potential emissions embodied in the gas they use, if no other person is liable for that gas under sections 20-25, 33, 35 or 35A of the *Clean Energy Act 2011* and certain conditions are met.

The reporting requirements relate to the report contents and any netted-out numbers that may apply.

Regulation 4.32LB

New regulation 4.32LB sets out what a person who has a provisional emissions number for the reporting year under section 36B or 36C of the *Clean Energy Act 2011* must report in a report under section 22A of the *National Greenhouse and Energy Reporting Act 2007*. Section 35B and 36C of the *Clean Energy Act 2011* create liability for the importation of LPG or LNG for non-transport use and the production of LPG or LNG for non-transport use respectively.

The reporting requirements relate to the report contents and any netted-out numbers that may apply.

Regulation 4.32LC

New regulation 4.32LC sets out what a Designated Opt-in Person (DOIP) who has a provisional emissions number for the reporting year under the Opt-in Scheme under Part 3, Division 7 of the *Clean Energy Act 2011* must report in a report under section 22A of the *National Greenhouse and Energy Reporting Act 2007*. The Opt-in Scheme allows certain large users of a specified taxable fuel to manage their carbon price liability through the carbon price mechanism, rather than through the fuel tax system. A single person, the DOIP, can manage the specified taxable fuel liabilities of a GST group, a GST joint venture as well as themselves.

New regulation 4.32LC requires a DOIP to provide a separate report for each GST group and GST joint venture for which they were the representative member or the operator respectively. They are also required to provide a separate report for themselves acting in their own capacity, separately from any GST group or GST joint venture for which they are the representative member or operator. Certain information is required to be reported for the DOIP and for each GST group member or GST joint venture participant (referred to jointly as a ***partner*** of the DOIP).

The reporting requirements relate to the report contents and any netted-out numbers that may apply.

**Item 10**

Item 10 amends regulation 4.32N to include extra reporting requirements for new liable entities for reports under section 22AA of the *National Greenhouse and Energy Reporting Act 2007*.

New subregulation 4.32N(6)(b) repeals existing subregulation 4.32N(6)(b) to clarify that only the amount of natural gas attributable to the interim emissions number mentioned in 4.32N(6)(a) must be reported. Amounts of natural gas that were supplied to persons who quoted their OTN for that amount of natural gas, for example, do not need to be reported under this regulation.

New subregulations 4.32N(7)-(8) create new reporting requirements for persons who are liable for an amount of natural gas applied to their own use under section 35B of the *Clean Energy Act 2011;* persons who are liablefor potential emissions embodied in an amount of LNG or LPG; and persons who have a provisional emissions number under the Opt-in Scheme in section 92A of the *Clean Energy Act 2011.*

New regulation 4.32N(9) states that the relevant financial year for all reporting under this regulation ends on 31 March.

**Items 11-12**

Items 11 and 12 amend certain regulations to omit the words “(in gigajoules)” and “(in gigajoules), measured in accordance with the Measurement Determination”, which now appear in regulation 4.32F(3) and apply throughout the subdivision.

**Attachment B**

**Statement of Compatibility with Human Rights**

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

**National Greenhouse and Energy Reporting Amendment (LNG, LPG, Opt-in Scheme and Other 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 National Greenhouse and Energy Reporting Amendment (LNG, LPG, Opt-in Scheme and Other Measures) Regulation 2013**

The Regulation:

* requires persons with liabilities under the *Clean Energy Act 2011* and obligations under the *National Greenhouse and Energy Reporting Act 2007* to report details necessary to ensure compliance with, and administration of, the *Clean Energy Act 2011* and the carbon pricing mechanism in relation to:
  + importers, manufacturers, producers and Obligation Transfer Number (OTN) holders of non-transport LNG and LPG;
  + participants in the liquid fuel Opt-in Scheme; and
  + persons liable for their own use of natural gas
* amends the *National Greenhouse and Energy Reporting Regulations* *2008* (the NGER Regulations) to make minor changes to require the reportage of methods for measuring amounts of natural gas for the purposes of calculating the potential emissions embodied in them; and
* amends the NGER Regulations to make minor changes to provide greater clarity on the operation of certain provisions

**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 requires certain persons who enter LPG or LNG for home consumption or are supplied LPG or LNG; who have elected to participate in the Opt-in Scheme under the Act; and/or who have used natural gas to provide personal information for the purpose of ensuring compliance and administration of the *Clean Energy Act 2011* and the *National Greenhouse and Energy Reporting Act* *2007*.

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.

**Yvette D’Ath**

**Parliamentary Secretary for Climate Change, Industry and Innovation**