

EXPLANATORY STATEMENT

Issued by the authority of the Minister for Energy and Emissions Reduction

Fuel Security Act 2021

Fuel Security (Fuel Security Services Payment) Rule 2021

Purpose and Operation

The *Fuel Security (Fuel Security Services Payment) Rule 2021* (the Rule) prescribes various technical and administrative matters for the purposes of the fuel security services payment (the FSSP) aspects (primarily under Part 3) of the *Fuel Security Act 2021* (the Act). In particular, this Rule prescribes requirements for:

- meeting the definition of an “FSSP fuel” under the Act;
- making an application for the FSSP;
- establishing eligibility for the FSSP;
- determining, varying or terminating a refinery operator’s commitment period;
- calculating and paying the FSSP;
- reporting by recipients of the FSSP; and
- repaying the FSSP in specified circumstances.

As set out in the explanatory memorandum to the Fuel Security Bill 2021 (the Bill) which became the Act, Part 3 of the Act establishes payment of an ongoing FSSP (i.e. a bounty) for the production of gasoline, diesel and kerosene. The payment recognises the essential contribution refineries in Australia make to the security of Australia’s fuel supplies. Eligible refinery operators will receive the FSSP when they commit to continuing to refine FSSP fuels until at least 30 June 2027. The payment rate will be set as a function of refinery market conditions based on independent and verifiable markers. The FSSP will provide up to 1.8 cents per litre when refinery margins fall to the point where refineries are making losses. No payments will be made when refineries make profits.

Payments of the FSSP will be made to refinery operators on a quarterly basis in arrears, and will be subject to requirements to be prescribed in the Rule. The Act also provides for recovery of amounts of the FSSP paid to refinery operators should they withdraw from their domestic refining commitment early. Applicants are required to be constitutional corporations (paragraph 40(2)(a) of the Act).

Authority

The Rule is made pursuant to the Act, in particular section 84 includes the power for the Minister to make legislative rules. In making this Rule the Minister has, consistent with subsection 43(4) of the Act, had regard to the *Fuel Security (Fuel Security Services Payment) Guidelines 2021* (Guidelines), which relate to the approach to setting the rate of the FSSP, and are available at legislation.gov.au. The Minister has also, for subsection 43(5) of the Act, had regard to:

- the determination by the Minister under subsection 44(1) of the Act that 6.4 cents per litre (cpl) is, at the time of making that determination, the margin sufficient to ensure that refineries operating in Australia over the period starting on 30 June 2021 (i.e. the day the Act commenced) and ending on 30 June 2027 do not make a loss; and
- the principle that (subject to the cap of 1.8 cpl) the amount of FSSP paid to a person for quarters ending in the person's commitment period should be guided by the margin that is sufficient to ensure that refineries operating in Australia over the person's commitment period do not make a loss.

Consultation

Targeted consultation with stakeholders including refinery operators, was undertaken during drafting for the Act, and following introduction of the Bill to Parliament, on key aspects of this Rule and other associated subordinate instruments (e.g. the *Fuel Security (Fuel Security Services Payment) Guidelines 2021*). Refinery operators were also consulted on a number of drafts of the Rule to ensure the Rule would operate as intended. Minor amendments were made to the wording of the Rule to address comments received so that unintended consequences of the drafting would be avoided and the Rule would provide greater clarity to the requirements of the FSSP scheme.

Regulatory Impact

An addendum to the Regulation Impact Statement (RIS) previously prepared in relation to the Act (reference numbers: 42904 and 20489) has been prepared for the purpose of this instrument in accordance with the Australian Government Guide to Regulation, which is available at pmc.gov.au. A copy of the Addendum to the RIS is included at the end of this Explanatory Statement.

Details of the *Fuel Security (Fuel Security Services Payment) Rule 2021*

PART 1 – PRELIMINARY

Section 1 – Name

This section specifies the name of this instrument as the *Fuel Security (Fuel Security Services Payment) Rule 2021* (the Rule).

Section 2 – Commencement

This section provides that the Rule commences on the day after it is registered on the Federal Register of Legislation.

Section 3 – Authority

Section 3 provides that the Rule is made under the Act. In particular, section 84 of the Act confers power on the Minister to make legislative rules. Subsection 84(3) of the Act includes the power for rules to prescribe matters by reference to other instruments or writing as in force from time to time. This power is used in section 12 of the Rule to refer to key variables for the calculation of the fuel security services payment rate, which varies by quarter for each refinery, in response to changes in prevailing fuel prices and shipping costs. This is essential to setting the level of the payments relative to current market conditions.

Section 4 – Definitions

This section provides for definitions of terms used in the Rule that are not otherwise defined in the Act or are intended to have a different meaning to a term defined under the Act, for example the definition of “*feedstock*” is intended to be defined differently under the Act and the Rule. Key definitions include the following:

- ***blendstock*** is defined to cover a range of finished products which are not refined at the committed refinery (rather, they are imported to the refinery) and are not included in determining the volume of FSSP fuels under section 13 of the Rule. However, the note to the definition of “blendstock” advises the reader that a feedstock (a term that is also defined in section 4 of the Rule – see explanatory note below), which is transformed at the refinery is not a blendstock for this purpose.
- ***feedstock*** is defined broadly to cover a range of inputs, such as crude oil and condensate, that are transformed into petroleum products at the refinery. This is not relevant to the Minimum Stockholding Obligation use of the term feedstock in the Act. The feedstocks and crude oil involved in refining may come from domestic or international sources.
- ***force majeure event*** is a signpost definition that refers readers to subsection 20(3) of the Rule in which the term is substantively defined in similar terms to the commercial

concept of force majeure (e.g. natural disasters, war, epidemic, etc) (see explanatory note for subsection 20(3) of the Rule below).

- **guidelines** are defined as the *Fuel Security (Fuel Security Services Payment) Guidelines 2021*, a notifiable instrument made under subsection 43(4) of the Act as in force from time to time and registered on the Federal Register of Legislation (www.legislation.gov.au).
- **investment grade credit rating** is defined as a credit rating from a ratings agency, such as Standard and Poor's (a division of S&P Global), that is regarded in financial markets as of investment grade (considering the entity's past history of borrowing and repaying debts and the entity's future economic potential), such as a BBB- or higher grade (i.e. BBB to AAA) credit rating.
- **material adverse change** is a signpost definition that refers readers to subsection 20(5) of the Rule in which the term is substantively defined (see explanatory note for subsection 20(5) of the Rule below).
- **refinery operator** is defined to include the person eligible to receive fuel security services payments as well as any other entities that exercise operational control over the refinery (if not the person eligible to receive the payments). The term is therefore intended to cover the entities that can directly influence the matters referred to in:
 - section 20 of the Rule – that is, the matters that are required to be established to satisfy the Minister that the obligation to repay the FSSP under subsection 50(1) of the Act does not apply (e.g. where the refinery is operationally or commercially unviable as a result of a force majeure event, that the entity (i.e. “refinery operator”) could not have reasonably prevented nor reasonably limited the effect of that event); and
 - section 22 of the Rule – that is, the matters that are required to be established to satisfy the Secretary that it is appropriate to extend the 120 day period mentioned in paragraph 50(1)(b) of the Act.
- **relevant independent analysis** is a signpost definition that refers readers to subsection 20(10) in which the term is substantively defined (see explanatory note for subsection 20(10) of the Rule below).
- **related refinery entity** means the Australian controlling corporation for a refinery operator, any other entity that has ownership of the refinery, and any related body corporate of the refinery operator who is able to control or significantly influence the operational decisions of the refinery.

The *Fuel Quality Standards Act 2000*, *Petroleum and Other Fuels Reporting Act 2017*, *Petroleum and Other Fuels Reporting Rules 2017*, *Banking Act 1959*, and *Industry Research and Development (Temporary Refinery Production Payment Program) Instrument 2021* are also incorporated as in force from time to time, consistent with the usual reference to Acts and legislative instruments. They are available from the Federal Register of Legislation (www.legislation.gov.au).

Unless specified in the Rule, where a term is defined in the Act the definition of that term will also apply to the Rule – e.g. “Australian controlling corporation” (defined in paragraph 8(2)(a) of the Act).

Section 5 – FSSP fuel

This section prescribes requirements for gasoline, diesel and kerosene fuels to satisfy the definition of “FSSP fuel” in section 5 of the Act; namely:

- Each FSSP fuel must be supplied and able to be used for road or air transport purposes in Australia. This reflects the policy intent that fuels that can be used for on-road transport, or which are saleable for air transport purposes in Australia, should qualify for the FSSP. Fuels that cannot be used for on-road transport (e.g. marine diesel, diesel that is only allowed to be used for mining, etc.) or which cannot be sold domestically for air transport should not qualify for the FSSP because such fuels cannot be relied upon to deliver fuel security to critical services.
- Prescribed classes of gasoline and diesel must also be able to be supplied for those key transport purposes consistent with the *Fuel Quality Standards Act 2000* (FQS Act). This requirement is intended to ensure only fuels which meet the appropriate standards to support transport in Australia are recognised as being FSSP fuel.

This section also specifies which classes of gasoline, diesel and kerosene reported under the *Petroleum and Other Fuels Reporting Rules 2017* (POFR Rules) (see, particularly, column 3 of items 5-7 of the Table in clause 1 of Schedule 1 to the POFR Rules) qualify as an FSSP fuel for the purposes of the Act, thereby ensuring that only key transport fuels used in Australia and reported by refinery operators under the POFR Act and POFR Rules are recognised as being FSSP fuels.

However, this section does not preclude other kinds of fuels from being prescribed as FSSP fuel in future as new fuel technologies emerge (see, for example, paragraph (d) of the definition of “*FSSP fuel*” under section 5 of the Act or if the fuel types for existing FSSP fuels need refinement over time).

PART 2 – APPLICATIONS FOR FUEL SECURITY SERVICES PAYMENT

Section 6 – Applications for fuel security services payment

This section prescribes, for the purpose of paragraph 39(3)(b) of the Act, the requirements that must be met for, and the information that must be included in, an application for the FSSP.

Subsection 6(2) of the Rule sets out the information required to be provided in an application for the FSSP in the approved form to assist with assessing whether to grant such applications. Each class of specified information is required to either:

- help determine whether an applicant is eligible to receive the FSSP under subsection 40(2) of the Act – paragraphs 6(2)(a)-(c) of the Rule;
- clarify that provision of historic refining information is required only if such information has not previously been provided by the applicant as part of their application (if any) for the Temporary Refinery Production Payment Program prescribed by the *Industry Research and Development (Temporary Refinery Production Payment Program) Instrument 2021* (registered on the Federal Register of Legislation and available at legislation.gov.au) – subparagraph 6(2)(c)(i) of the Rule;
- minimise the risk to the Commonwealth that the applicant will not be able to meet their minimum commitment period for refining FSSP fuel in Australia because of either a force majeure event or a material adverse change in circumstances, by requiring applicants to outline their operational and risk mitigation policies and procedures, such as insurance arrangements – paragraph 6(2)(d) of the Rule;
- minimise the risk to the Commonwealth that the applicant will not be able to repay the FSSP as required under subsection 50(1) of the Act if they cease refining operations before the end of their commitment period, by requiring provision of security – paragraph 6(2)(e) and subsection 6(3) of the Rule;
- help determine an applicant’s minimum commitment period for refining FSSP fuel in Australia, by requiring the applicant to nominate a proposed commitment date that is on or between 30 June 2027 and 30 June 2030 – paragraph 6(2)(f) of the Rule;
- help determine the components (e.g. total refining costs, product yields, crude feedstock) for the fuel security service payment rate for any new refinery operators who enter the market after commencement of the Guidelines – paragraph 6(2)(g) of the Rule;
- help satisfy the Minister that the applicant intends to cooperate with regard to the preparation of future milestone reports which will review the FSSP scheme (see section 14 of the Guidelines), including by providing access to relevant financial information for the committed refinery margin and the preparation of the milestone report – paragraph 6(2)(h) of the Rule; and
- provide administrative arrangements for making payments of the FSSP – paragraph 6(2)(i) of the Rule.

Subsection 6(3) of the Rule expands upon the requirement that an application for the FSSP must include security. This subsection specifies that either a bank guarantee or an enforceable deed of guarantee by the Australian controlling corporation of the applicant is required to provide sufficient security to the Commonwealth that any debt arising under section 50 of the Act that has not been paid will be paid when it becomes due and payable. The requirement under subparagraph 6(3)(a)(iii) of the Rule that any deed provided by an Australian controlling corporation requires the provision of a replacement guarantee in the event that that entity becomes, or is reasonably likely to become, unable to meet the repayment obligations guaranteed, is intended to protect the financial interests of the Commonwealth in the event of any change of ownership of the entity or circumstances where the entity no longer has an investment grade credit rating. The general expectation is that an appropriate

replacement guarantee would be provided by the parent company would be sufficient, but could include a bank guarantee instead.

PART 3 – ELIGIBILITY DECISION

Section 7 – Requirements for refining of FSSP fuel

This section prescribes, for the purpose of paragraph 40(2)(c) of the Act, the technical requirements applying to the refining of FSSP fuel.

In particular, the refining must involve the transformation of crude oil, with other feedstocks, into gasoline, diesel and kerosene meeting the requirements to be an FSSP fuel (see explanatory note for section 5 of the Rule above). This reflects the policy intention that the FSSP should only be payable in relation to the domestic refining of all three key transport fuels which meet the requirements for being an FSSP fuel (i.e. able to be supplied and used for road or air transport in Australia).

In addition, FSSP fuels must constitute a majority of the annual output of the refinery at the time the application under section 39 of the Act is made. This reflects the intent that the FSSP is payable only in relation to domestic refining which significantly contributes to Australia's fuel security; namely, by refining and producing predominantly FSSP fuel.

Section 8 – General requirements to approve applications

This section prescribes, for the purpose of paragraph 40(2)(d) of the Act, other general requirements an application for the FSSP must meet, which relate to and appropriately expand upon the requirements under sections 39 and 40 of the Act. This reflects the policy intent that the Minister must be satisfied that sufficient information is provided by the applicant and the requirements for the grant of an FSSP application are met.

Specifically, these requirements include the Minister being satisfied that:

- the applicant has the capability to refine FSSP fuel at the Australian refinery nominated as the committed refinery in the application and intends to do so for the duration of the commitment period proposed by the applicant under paragraph 6(2)(f) of the Rule;
- the security provided with the application is sufficient to mitigate the risks of the applicant being unable to meet any repayment obligations which may arise under section 50 of the Act. The Minister must also consider the creditworthiness of the entity providing the security (paragraph 8(2)(b) and subsection 8(3) of the Rule); and
- the applicant intends to cooperate with the Department in relation to the preparation of future milestone reports (including providing access to appropriate financial information relating to the committed refinery's margin and the preparation of the milestone report) which will review the FSSP scheme (see section 14 of the Guidelines).

Further, this section requires that the approval of the application for the FSSP must not result in two persons being eligible for fuel security services payments for the same refinery and quarter (paragraph 8(2)(d) of the Rule); and that the applicant has not previously been approved under section 40 of the Act for the same refinery (paragraph 8(2)(e) of the Rule). These requirements are designed to ensure refinery operators who have been unsuccessful in applying for an extension of their commitment period to 2030 under section 41 of the Act (see also the explanatory note for subsection 10(2) of the Rule below) cannot simply reapply for the FSSP.

Subsection 8(3) of the Rule clarifies that evidence of the creditworthiness of an entity, including the investment grade credit rating (as defined under section 4 of the Rule) provided by a recognised ratings agency, is accepted on its face (until proved otherwise) as evidence that security provided by the applicant as part of their FSSP application is both sufficient and enforceable.

Any decision to refuse an application is a reviewable decision under Part 5 of the Act.

PART 4 – COMMITMENT PERIODS

Section 9 – Initial commitment period

This section prescribes, for the purpose of paragraph 41(1)(a) of the Act, the period in which an applicant's original commitment period must end. Specifically, a commitment period must end at the end of a quarter requested by the applicant that is from 30 June 2027 to 30 June 2030. This reflects the policy intention that, to be eligible for the FSSP, refinery operators must commit to refine FSSP fuel at a committed refinery in Australia until at least 30 June 2027 (see also paragraph 41(1)(b) of the Act) and, alternatively, may choose to commit to a longer period up to 30 June 2030. The latter date reflects the time limitation applying to the special appropriation for the FSSP scheme established under section 58 of the Act.

The decision to set a commitment period is a reviewable decision under Part 5 of the Act.

Section 10 – Variation or termination of commitment period

This section prescribes, for the purpose of subsection 41(3) of the Act, the requirements applicable to a variation or termination of a person’s (i.e. refinery operator’s) original commitment period.

Subsection 10(2) of the Rule prescribes that an original commitment period may only be varied or terminated in accordance with the requirements under subsections 10(3) and 10(4) of the Rule.

Subsection 10(3) of the Rule provides that the Minister must approve an application requesting an extension of the commitment period to 30 June 2030, unless the Minister is satisfied that the applicant no longer meets the eligibility criteria under subsection 40(2) of the Act (excluding the requirement under paragraph 8(2)(e) of the Rule that the applicant was not previously approved for the same refinery) at the time of applying for the extension. This provision provides certainty of the commitment period for applicants, and reflects the policy intent to support refiners to continue refining FSSP fuel within Australia for as long as possible.

This subsection also reflects the policy intent that refinery operators are limited in the number of applications they may make to extend their commitment period (i.e. they can only have one extension). For example, if a refinery operator is intending to cease refining FSSP fuel after the end of their original commitment period (i.e. a date before 30 June 2030), they cannot continually apply to extend their commitment period each quarter until they ultimately cease refining operations. Rather, under subsections 10(2) and (3), a refinery operator must either apply to extend their commitment period to 30 June 2030 or be satisfied they will cease participation in the FSSP scheme from the end of their original commitment period.

Subsection 10(4) of the Rule provides that a commitment period must be terminated or varied to a date earlier than was originally notified (i.e. the general rule) only if the Minister is satisfied that one of the following limited scenarios applies:

- a. If a force majeure event or material adverse change has occurred, which has caused the committed refinery to cease operations because they are commercially or operationally unviable, all information required to be reported by section 17 of the Rule must be provided to the Minister. The Minister must be satisfied that no repayment would be required under section 20 of the Rule if the refinery closed on the proposed varied or terminated end date.

This is intended to ensure the Minister receives all necessary information on which to base a decision whether the “early cessation and no repayment obligation” threshold criteria have been met.

- b. If a refinery operator wishes to cease refining operations for convenience prior to the end of their commitment period, all payments made under Part 3 of the Act in relation

to the committed refinery that would be repayable under section 21 of the Rule must have been repaid to the Commonwealth.

It is intended that all applicable repayments of the FSSP, including partial repayments calculated under section 21 of the Rule, must have occurred before termination or variation to an earlier end date may be granted under paragraph 10(4)(b) of the Rule. No further FSSP would then be paid.

- c. The Minister is satisfied that the Act, the Rule, or the Guidelines, have been amended to materially reduce the FSSP payable under Part 3 of the Act in respect of the committed refinery in the 180 days before an application under subsection 41(2) of the Act to terminate or vary the period is made.

It is intended this exception to the general rule applies if the Act, the Rule or the Guidelines have been amended to significantly change the method or formula for calculating the amount of FSSP payable for a quarter. A mere change in the rate of payment of the FSSP calculated under the existing formula would not be sufficient to authorise termination or variation of a refinery operator's commitment period to a date earlier than was originally notified.

Subsection 10(5) of the Rule permits, if necessary, a commitment period that is varied or terminated under subsection 10(3) to end on a date before the application for variation or termination (as applicable). It is intended this would apply in circumstances where the refinery has had to permanently cease refining suddenly and without warning because of one of the circumstances set out under section 20 of the Rule, and cessation has therefore occurred before an application to vary or terminate the commitment period has been able to be made.

Decisions about setting, varying or terminating commitment periods are reviewable under Part 5 of the Act.

PART 5 – PAYMENT OF FUEL SECURITY SERVICES PAYMENT

Section 11 – Circumstances when fuel security services payment is not payable

This section prescribes, for the purposes of paragraph 42(2)(c) of the Act, the circumstances in which the FSSP is not payable to a refinery operator for a quarter.

Subsection 11(2) of the Rule specifies that the FSSP will not be payable if the refining of fuel by the committed refinery during the quarter fails to meet the requirements of subsection 7(2) of the Rule (i.e. the refining does not involve the transformation of crude oil, with other feedstocks, into gasoline, diesel and kerosene meeting the requirements to be an FSSP fuel) (see explanatory note for section 7 above), and such failure is not because of a temporary cessation of production of one or more FSSP fuels.

This reflects the policy intent that refining must involve the production of gasoline, diesel and kerosene (i.e. FSSP fuel), unless the reason for non-compliance is a mere temporary cessation of production of one or more FSSP fuels. Temporary cessations include maintenance turnarounds where production is expected to resume after relevant work has been completed.

Under subsection 11(3) of the Rule the FSSP will not be payable if:

- the person providing the security in relation to the repayment obligation no longer has an investment grade credit rating (where relevant); and
- it is reasonably likely they will be unable to meet the obligations guaranteed by the security; and
- an appropriate replacement security has not been provided to the Secretary.

Subsection 11(4) of the Rule clarifies that if an appropriate replacement security is subsequently provided to the Secretary, the FSSP that would have been payable in relation to the relevant quarter but for subsection 11(3) is then payable.

Subsections 11(3) and (4) are intended to protect the Commonwealth against potential financial losses that may flow if the security becomes inadequate to mitigate the risk of the refinery operator being unable to meet any repayment obligations which may arise under section 50 of the Act.

Subsection 11(5) of the Rule establishes a definition of the term “*appropriate replacement security*” for the purpose of paragraph 11(3)(c) and subsection 11(4) of the Rule. That term is defined as including:

- a bank guarantee covering the payment of any debt due under section 50 of the Act by the applicant that has not been paid at the time it becomes due and payable (as per paragraph 6(3)(b) of the Rule); or
- a replacement guarantee provided by the Australian controlling corporation for the refinery operator (i.e. recipient of the FSSP) in accordance with subparagraph 6(3)(a)(iii) of the Rule.

Subsection 11(6) of the Rule ensures that any decision that FSSP is not payable for a quarter is a reviewable decision under Part 5 of the Act.

Section 12 – Rate of fuel security services payment

This section prescribes, for the purpose of subsection 43(1) of the Act, the method for determining the number of cents per litre payable for each FSSP fuel for a quarter for a committed refinery.

As required under subsection 43(5) of the Act, in making this provision of the Rule, the Minister had regard to matters including:

- the determination made by the Minister under subsection 44(1) of the Act that 6.4 cents per litre (cpl) is, at the time of making that determination, the margin sufficient to ensure that refineries operating in Australia over the period starting on 30 June 2021 and ending on 30 June 2027 do not make a loss;
- the principle that (subject to the 1.8 cent per litre cap under paragraph 43(2)(a) of the Act) the amount of the FSSP paid to a person for quarters ending in the person's commitment period should be guided by the margin that is sufficient to ensure that refineries operating in Australia over the person's commitment period do not make a loss;
- other matters, set out under subsections 43(6) and (7) of the Act, relevant for determining the margin sufficient to ensure that refineries operating in Australia do not make a loss; and
- the Guidelines made by the Minister under subsection 44(3) of the Act in relation to the prescribing of a method for working out a number of cents per litre for an FSSP fuel – the current Guidelines, at the time of making this Rule, explain the approach to working out the method and the chosen components of the formula in the Rule.

Following consideration of the matters above, section 12 of the Rule sets out the formula for calculating the quarterly rate of the FSSP payable to a recipient refinery operator. The quarterly rate is rounded to two decimal places.

The prescribed formula uses certain pre-determined inputs (e.g. individual refinery product yield (subsection 12(4)) and basis differential (subsection 12(3)) and variable inputs (e.g. fuel and feedstocks prices (subsection 12(3)) and transport costs (subsections 12(5) and (6)), to determine a cents per litre rate for a quarter. Because of variable components of the formula, the cents per litre payment is calculated at the end of each quarter and applies to the volumes of FSSP fuels refined during that quarter.

Subsection 12(1) of the Rule and the formula under subsection 12(2) each reflect that the payment rate may vary each quarter. In some instances it may be zero (paragraph 12(1)(c)) (i.e. the collar), but will be capped at a maximum of 1.8 cents per litre (paragraph 12(1)(a)). The policy intent is to limit the downside risk for refiners and make payments only when required to maintain the ongoing refining of key transport fuels. This will ensure that tax payers are not paying profits to shareholders.

To ensure appropriate support is provided to refinery operators and avoid overpayments, the payment rate will be adjusted in response to changes in market conditions during an FSSP period. In practice, the cents per litre rate will be calculated at the end of each quarter and will apply to volumes of FSSP fuel that have been refined during that quarter.

Under subsections 12(2) and (3) of the Rule, the rate of payment is determined with reference to an external margin marker, which is tied to external market conditions for the relevant quarter.

The margin marker design uses a formula which incorporates external, publicly reported, market prices for refined products, crude oil and shipping refined product and crude oil to Australia. It is determined on a quarterly basis using average monthly prices for refined product, crude oil, crude oil (dirty) freight, refined product (clean) freight (as reported by S&P Global Platts) and corresponding monthly exchange rates (as reported by the Reserve Bank of Australia (RBA)) over the preceding three months in the quarter.

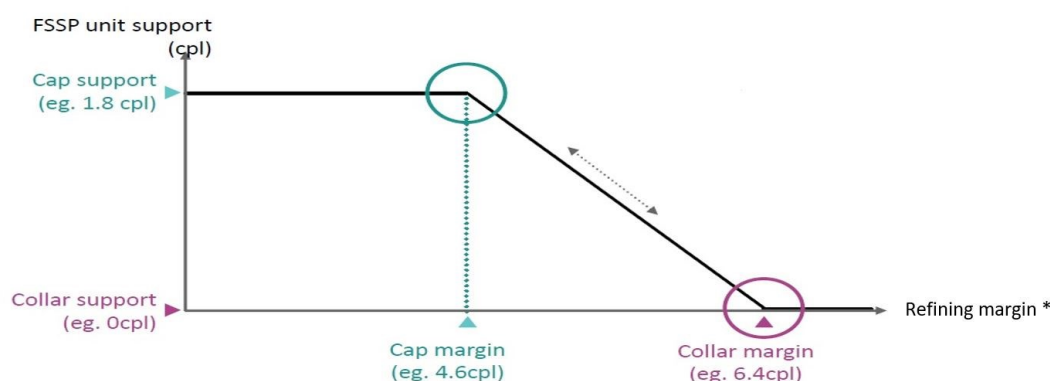
The application of the margin marker to each eligible refinery approximates the actual refining margins attained by each refinery under equivalent market conditions. The application of the margin marker depicts the unique operating environment of each refinery, reflecting differences in refinery configuration and the resultant refined product mix and yield.

Each margin marker also includes an adjustment factor – referred to as a basis differential – which is used to better align the margin marker with the actual refining margins attained by each refinery (subsection 12(3)). The basis differential for each margin marker has been calibrated to the actual refining margin of each refinery using historical data provided by refinery operators.

The basis differential recognises that the actual margins achieved by refineries are determined by a combination of other factors. For example, refineries will from time to time vary the choice of crude oil feedstock in response to changes in the relative prices of various crude oils and their associated freight rates to Australia. The actual margins attained by refineries also depend on site specific factors, such as the depth of shipping berths, which may constrain the use of large crude tankers.

Under section 12 of the Rule, refinery operators are eligible for payment when the calibrated margin marker – which incorporates the basis differential – falls below the collar margin of 6.4 cpl (10.2 AUD/barrel). The collar margin of 6.4 cpl was determined by the Minister under subsection 44(1) of the Act, taking into account expected operational and capital expenses of committed refineries until 30 June 2027 (i.e. the minimum commitment period) and calculating the margin required to ensure that refineries operating in Australia do not make a loss over that period.

Payment rates increase by 0.1 cpl for every 0.1 cpl decline in the calibrated margin marker below the collar margin. The maximum payment rate of 1.8 cpl applies when the calibrated margin marker is at or below the cap margin of 4.6 cpl (7.3 AUD/barrel). The relationship between FSSP payment rate, the cap margin and the collar margin is depicted in Figure 1 below.



*As determined by the relevant calibrated margin marker for each refinery

Figure 1: Graph showing the increase of FSSP support in relation to decreasing refinery margins

Subsection 12(7) of the Rule provides a number of rules for converting measurements, values, and volumes, for the purposes of applying the formula under section 12.

The method prescribed under section 12 of the Rule is anticipated to be in place for an extended period of time to set the quarterly cents per litre payments of the FSSP. The method for determining the rate of the FSSP will be subject to a milestone report after two years (see section 14 of the Guidelines) to ensure it remains appropriate for Australian market conditions.

A number of elements of the formula incorporate variables published by S&P Global Platts. Information about the organisation and data sets is available at <https://www.spglobal.com/platts/>. S&P Global Platts is an authoritative source of industry data for these variables and is a key resource already used by refineries and their investors. It is considered that the S&P Global Platts data sets meet the objects of the scheme and provide a more accurate reflection of the variables for a particular quarter. Accordingly, those data sets are incorporated as in force from time to time and the organisation charges subscription fees to access that data. Paragraph 84(3)(b) of the Act expresses a contrary intention for the purposes of subsection 14(2) of the *Legislation Act 2003*, as it permits the data sets published by S&P Global Platts to be applied, adopted or incorporated as in force from time to time.

Exchange rate information is taken from the Reserve Bank of Australia which publishes monthly average exchange rates on their website: www.rba.gov.au. Again, this information is applied, adopted or incorporated as in force from time to time pursuant to paragraph 84(3)(b) of the Act.

Subsection 12(5) of the Rule lists the conversion rates for a specific volume conversion for the fuel, in barrels per tonne. The conversion rate is also published by S&P Global Platts under the refined products methodology.

If S&P Global Platts modifies or ceases to publish a classification or code for a value in the future, the most equivalent or similar published value will be identified and used to determine that value. Subsection 12(8) of the Rule requires the Secretary to consult with each FSSP recipient before using that value to calculate the FSSP.

Section 13 – Determining quantity of FSSP fuel

This section prescribes, for the purpose of subsection 43(3) of the Act, the manner of determining the number of litres of FSSP fuel refined by a person at a committed refinery.

As required under subsection 43(5) of the Act, in making this provision of the Rule, the Minister had regard to matters including:

- the determination made by the Minister under subsection 44(1) of the Act;
- the principle that (subject to the 1.8 cent per litre cap under paragraph 43(2)(a) of the Act) the amount of the FSSP paid to a person for quarters ending in the person's commitment period should be guided by the margin that is sufficient to ensure that refineries operating in Australia over the person's commitment period do not make a loss; and
- other matters, set out under subsections 43(6) and (7) of the Act, relevant for determining the margin sufficient to ensure that refineries operating in Australia do not make a loss.

Following consideration of the matters above, section 13 of the Rule requires that volumes of FSSP fuel must be measured consistently with requirements for the sale of those fuels in Australia and reporting of information relating to those fuels under the POFR Rules, and must exclude any blendstocks (as defined under section 5 of the Rule) and any volume of fuel from the refinery which does not meet the requirements to be an FSSP fuel (as defined under sections 5 of the Act and Rule).

These requirements will ensure the fuel is genuinely refined at the refinery, that reported information is able to be checked and verified, and any blending will be appropriately taken into account.

Section 14 – Process for fuel security services payments

This section prescribes, for the purposes of section 45 of the Act, the process for payment of the FSSP. Therefore, the details of the administrative mechanics associated with processing payments are delegated to this instrument.

This section provides that the FSSP is payable for a quarter after the Secretary has received the required information and is satisfied with the volume of FSSP fuel refined at a committed refinery in the quarter meeting the requirements under sections 5 (definition of "FSSP fuel") and 13 (determining quantity of FSSP fuel) of the Rule and reported under the POFR Act for the refinery. This allows the Secretary (or delegate) to be sure about the accuracy and veracity of reported volumes and calculations before payments are made. It is appropriately

tempered by the requirement under subsection 14(3) of the Rule that the Secretary must make payments as soon as practicable, and no later than 30 days, after receiving the relevant information (including volumes of refined FSSP fuels and blendstock) under section 19A of the POFR Rules, and becoming satisfied under subsection 14(1) of the Rule.

Subsection 14(2) of the Rule clarifies that payments are to be made to nominated bank accounts for the recipient.

Section 15 – Publication of information

This section prescribes, for the purposes of paragraph 46(b) of the Act, information required to be published on the Department’s website. This information is in addition to the total amount of FSSP paid each financial year, which is required to be published under paragraph 46(a) of the Act.

Section 15 of the Rule requires the total amount of fuel security services payments for each quarter to be published on the Department’s website within 14 days after those amounts are paid.

As for the publication requirements under the Act, this section helps ensure public transparency about the payments and access to the appropriation.

PART 6 – REPORTING AND NOTIFICATION OBLIGATIONS

Section 16 – Reporting refinery operation—general

This section prescribes, for the purposes of paragraph 47(2)(a) of the Act, general matters that must be reported by persons (i.e. refinery operators) during their commitment period.

Specifically, this section requires refinery operators to report, as applicable:

- the reasons why a committed refinery has failed to meet the refining requirements under subsection 7(2) of the Rule in the preceding quarter;
- the reasons why no FSSP fuel was refined at the committed refinery in the preceding quarter; or
- the reasons why subsection 11(3) of the Rule applies to a quarter – i.e. the FSSP is not payable for the quarter because the person providing security for the refinery operator’s repayment obligations (under section 50 of the Act) no longer holds an investment grade credit rating, is likely to be unable to meet the guaranteed repayment obligations and an appropriate replacement security has not been provided to the Secretary – and whether a replacement security is likely to be provided.

Such information is required to be reported within 21 days of the end of the quarter (subsection 16(2) of the Rule). However, the obligation to report these matters does not apply if the refinery operator has notified the Commonwealth under section 48 of the Act that they

will no longer be eligible for the FSSP for the rest of their commitment period (subsection 16(3) of the Rule).

The note to section 16(3) of the Rule advises the reader that additional reporting of the volume of FSSP fuel refined in each quarter is required under the POFR Act and POFR Rules. This reflects the fact that refinery operators are required to report matters relating to the quantities and kinds of FSSP fuels produced by committed refineries in each quarter of their commitment period, under the *Petroleum and Other Fuels Reporting Act 2017* and POFR Rules. Such information will be necessary to calculate any FSSP payable for a quarter. Relying on information reported under the POFR laws is aimed to reduce regulatory burden on refinery operators to the extent possible, rather than requiring them to separately report these matters under both the POFR laws and the Rule.

Reported information will be used throughout a refinery operator's commitment period to determine:

- a refinery operator's quarterly eligibility for the FSSP; and
- if a refinery operator is obliged to repay any amount of the FSSP.

The reported information is therefore crucial to the administration and integrity of the FSSP scheme.

Section 17 – Reporting refinery operation— closure circumstances

This section prescribes, for the purposes of paragraph 47(2)(a) of the Act, matters that must be reported by persons (i.e. refinery operators) during their commitment period, relating to circumstances where the obligation to repay under subsection 50(1) of the Act would not arise if the committed refinery closed.

It requires refinery operators to report specific kinds of information relating to either the relevant force majeure event or material adverse change, as applicable, including the relevant independent analysis to support a conclusion that the event or change has caused the committed refinery to become commercially or operationally unviable, any steps taken or proposed to be taken by the refinery operator and related entities to prevent or limit the effect of the event or change (including those risk mitigation measures referred to under paragraph 6(2)(d) of the Rule), and the costs of addressing the event or change.

The policy intent of this provision is to ensure the Minister is provided with all relevant information on which to base a decision whether:

- the repayment obligations under subsection 50(1) of the Act apply, or whether the criteria under section 20 of the Rule have been met such that the repayment obligation does not apply; and
- whether a refinery operator may request a variation or termination of their commitment period under paragraph 10(4)(a) of the Rule.

This section also requires the refinery operator to provide the required information to the Secretary as soon as practicable after the circumstance has arisen and the relevant independent analysis undertaken.

Section 18 – Notification

This section prescribes, for the purpose of paragraph 48(1)(f) of the Act, events concerning a committed refinery which have occurred or are anticipated to occur and which must be notified to the Secretary by the refinery operator.

Specifically, the refinery operator must notify the Secretary if a force majeure event or material adverse change has occurred, or is very likely to occur, that has the potential to result in the closure of the refinery (subsection 18(2) of the Rule).

Such notice is required to be provided by the later of 14 days after the event occurred, or if the impact of the force majeure event or material adverse change is unclear, 14 days after the refinery operator forms a conclusion that the event or change has the potential to result in the closure of the committed refinery (subsection 18(3) of the Rule).

Notice of these events in the timeframes stipulated are required to ensure the Department receives timely advice about potential disruptions or threats to the domestic supply of major transport fuels, and to help the Minister to make informed decisions about whether repayment obligations apply under section 50 of the Act.

PART 7 – REPAYMENT OBLIGATIONS

Section 19 – Waiver of debts and payment by instalments

This section prescribes, for the purpose of paragraphs 50(6)(b) and (c) of the Act, requirements applying to the waiver of debts or the recovery of debts by instalments.

Specifically, a decision by the Secretary under paragraph 50(6)(b) or (c) of the Act (i.e. to waive the right to recover a debt or class of debts, or to make arrangements to allow an amount of a debt that is payable by a person to the Commonwealth to be paid in instalments) must take into account, and be consistent with, the *Public Governance, Performance and Accountability Act 2014* (PGPA Act) and relevant rules and guidelines under that Act. The PGPA Act is incorporated as in force from time to time and is available at www.legislation.gov.au.

The Secretary, as the accountable authority under the PGPA Act, is required under:

- section 19 of that Act to keep the responsible Minister informed when making significant decisions, such as potentially waiving large debts under the Act; and
- section 11 of the *Public Governance, Performance and Accountability Rule 2014* (as in force from time to time and available at www.legislation.gov.au) to pursue recovery of each debt for which the Secretary is responsible, unless the Secretary

considers it is not economical to pursue recovery of the debt; or is satisfied that the debt is not legally recoverable; or the debt has been written off as authorised by an Act.

The prescribed requirements are appropriate, to ensure the waiver power is not unfettered, and applicable whole of Government policies are taken in account.

Section 20 – Circumstances when repayment obligation does not apply

Generally, where there has been a permanent cessation of refining FSSP fuel, the total amount of the FSSP will be required to be repaid (paragraph 50(2)(a) of the Act) unless paragraph 50(2)(b) of the Act applies (see section 21 below). This reflects the policy intent that the FSSP is only payable to refinery operators who commit to refining FSSP fuel in Australia for a minimum defined period, to ensure the continued supply of such fuels to critical users and local fuel-dependent industries.

Section 20 of the Rule prescribes, for the purpose of subsection 51(1) of the Act, the limited circumstances in which the FSSP repayment obligations under subsection 50(1) of the Act do not apply at all. These circumstances are limited to where sufficient evidence is presented to satisfy the Minister of each of the matters set out in the section, which include the occurrence of a material adverse change or a force majeure event. Generally, the refinery operator is expected to take reasonable steps to mitigate or avoid the occurrence of these events so that the closure decision is ultimately beyond the control of the refinery operator and related refinery entities.

Specifically, repayment obligations will not apply if:

- a. A defined force majeure event occurs which has the effect that the committed refinery cannot continue refining, and which causes the refinery to be either operationally unviable (i.e. it is not reasonably practicable for operational reasons to operate the refinery, or bring it back into operation, on an ongoing basis) or commercially unviable (as defined under subsection 20(7) of the Rule, e.g. the refinery continuously recording significant losses for the foreseeable future) – subsections 20(2) and (3) of the Rule; or
- b. A defined material adverse change occurs, which is considered to mean that the committed refinery is commercially unviable – subsections 20(4) and (5) of the Rule.

In either case, repayment obligations will not apply if:

- the event or change could not have been reasonably prevented or able to be mitigated by the refinery operator taking appropriate actions which a prudent, experienced and reasonable refinery operator would have taken in the circumstances;
- related refinery entities (as defined – see explanatory note for section 4 of the Rule above) have not unreasonably stopped or limited the refinery operator in undertaking

appropriate steps to prevent or limit the impact of the event or change (i.e. they should not have impeded appropriate mitigation steps); and

- relevant independent analysis is provided and demonstrates the event or change to have caused the operational or commercial unviability of the committed refinery.

In accordance with subsection 20(10) of the Rule, the relevant independent analysis will need to be prepared by appropriately qualified experts, based on the relevant financial records of the refinery operator and include consideration of EBIT and EBITDA for the refinery. This reflects the policy intent that all relevant information, including information that the event or change has caused the committed refinery to become commercially or operationally unviable, must be provided to support the Minister's consideration of whether the repayment obligation applies. The provision of this analysis is important evidence for the Minister, but does not preclude the commissioning of additional analysis or requests for further information that may be necessary for the Minister to become satisfied under this section.

If the Minister is satisfied of the specified circumstances and impacts, no repayment will be required under subsection 50(1) of the Act. This provision ensures that the intent of the commitment period is upheld in all but extreme circumstances beyond the control of the refinery and its owners.

Force majeure events are defined in subsection 20(3) of the Rule in similar terms to the commercial concept of force majeure (e.g. natural disasters, war, epidemic, etc), but it is important that the event results in (i.e. causes) the operational or commercial unviability of the committed refinery, rather than merely correlating with that situation. Paragraph 20(3)(i) includes other similar events not already defined in the other paragraphs.

The material adverse change circumstances are specified under subsection 20(5) of the Rule, and include a range of possible circumstances that could undermine, or have already undermined, the commercial viability of the refinery.

Paragraphs 20(5)(a) and (b) of the Rule are evidence of the commercial unviability of the refinery despite the payment of the FSSP and other support provided by the Australian Government. It is important that the Minister is able to determine these matters objectively, with reference to relevant analysis and information. In particular, the margins and losses need to be considered appropriately, without any artificial accounting treatments which would allow the circumstances to be met in situations when the refinery was commercially viable.

Paragraph 20(5)(c) of the Rule allows for significant regulatory changes from all levels of Government to be taken into account where they cause commercial unviability (but not announced changes to fuel quality standards). It is important that the event results in (i.e. causes) the commercial unviability of the committed refinery, rather than merely correlating with that situation (subsection 20(6) of the Rule). Refineries are expected to meet relevant regulatory changes efficiently and in a least cost way.

Paragraph 20(5)(d) of the Rule deals with workplace relations issues relating to viability, but only where all of the requirements of the *Fair Work Act 2009* are complied with, including good faith bargaining requirements.

Paragraph 20(5)(e) of the Rule concerns the removal of the FSSP as a result of legislative amendment and paragraph 20(5)(f) covers a significant material reduction in the level of FSSP by amendment to the Act or Rule which leads to a decision to close the refinery.

Subsection 20(7) of the Rule further defines commercial unviability, and subsection 20(9) of the Rule defines operational unviability (which is intended to capture when operationally it is not possible to continue refining).

Subsection 20(10) of the Rule ensures that the independent analysis is robust, expert and proportionate to the issues that need to be addressed. For example, an event that destroyed the entire refinery would need less analysis than the breakdown on a key piece of equipment.

Review of the Minister's decision is available through the process of varying or terminating a commitment period based on the application of this section (see explanatory note regarding section 10 of the Rule above).

Section 21 – Partial repayment circumstances

This section prescribes, for the purpose of subsection 51(2) of the Act, the circumstances in which less than the total amount of the FSSP paid to a refinery operator throughout their commitment period is repayable under subsection 50(1) of the Act, and a method for working out the lesser amount in those circumstances.

It is intended this form of repayment of the FSSP applies in circumstances where the refinery operator voluntarily chooses to cease refining FSSP fuel. The method for calculating the repayable amount reflects the policy intent that the amount repayable is in direct proportion to the remaining balance of the commitment period that will not be delivered by the refinery operator. This recognises the contribution made by refiners to Australia's fuel security during the commitment period, and ensures that funds are repaid appropriately.

For example, if an applicant approved in September 2021 for a commitment period to 30 June 2027 would have a total period from 1 July 2021 to 30 June 2027 (2191 days = CP). If the closure occurred on 30 June 2026 the repayment percentage would be $365/2191 = 16.66\%$.

Section 22 – Extension of period of cessation

Section 22 of the Rule prescribes, for the purpose of section 52 of the Act, the circumstances when the Secretary may extend the 120 day period mentioned in paragraph 50(1)(b) of the Act.

Specifically, the Secretary may extend the period if satisfied that:

- a. the refinery operator is taking, and will continue to take, all reasonable steps to continue refining FSSP fuel at the refinery as soon as reasonably practicable; and
- b. the refinery is expected to restart refining FSSP fuel either within 60 days after the end of the standard 120 day period or, if essential maintenance or capital works need longer, as soon as reasonably practicable after that maintenance or capital works are completed.

This provision therefore gives the Secretary flexibility to delay the FSSP repayment obligation being triggered if the cessation of refining FSSP fuel is not permanent, such as where the refinery intends to continue its refining activities, but for operational reasons cannot refine FSSP fuels for a period of time beyond the 120 days referred to in paragraph 50(1)(b) of the Act.

Subsection 22(3) of the Rule provides that the Secretary may extend the cessation period if satisfied that the extension would allow the refinery operator to finalise scheduled maintenance turnaround work and resume refining of FSSP fuels soon as practicable following the maintenance.

Any decision to refuse to extend this period is reviewable under Part 5 of the Act.

Statement of Compatibility with Human Rights

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

Fuel Security (Fuel Security Services Payment) Rule 2021

This Rule 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 Legislative Instrument

The *Fuel Security (Fuel Security Services Payment) Rule 2021* (the Rule) prescribes various technical and administrative matters for the purposes of the fuel security services payment aspects (primarily under Part 3) of the *Fuel Security Act 2021* (the Act). In particular, this Rule prescribes requirements for:

- meeting the definition of an “FSSP fuel” under the Act;
- making an application for the fuel security services payment (the FSSP);
- establishing eligibility for the FSSP;
- determining, varying or terminating a refinery operator’s commitment period;
- calculating and paying the FSSP;
- reporting by recipients of the FSSP; and
- repaying the FSSP in specified circumstances.

As set out in the explanatory memorandum to the Fuel Security Bill 2021 (the Bill) which became the Act, Part 3 of the Act establishes payment of an ongoing FSSP (i.e. a bounty) for the production of gasoline, diesel and kerosene. The payment recognises the essential contribution refineries in Australia make to the security of Australia’s fuel supplies. Eligible refinery operators will receive the FSSP when they commit to continuing to refine FSSP fuels until at least 30 June 2027. The payment rate will be set as a function of refinery market conditions based on independent and verifiable markers. The FSSP will provide up to 1.8 cents per litre when refinery margins fall to the point where refineries are making losses. No payments will be made when refineries make profits.

Payments of the FSSP will be made to refinery operators on a quarterly basis in arrears, and will be subject to requirements to be prescribed in the Rule. The Act also provides for recovery of amounts of the FSSP paid to refinery operators should they withdraw from their domestic refining commitment early. Applicants are required to be constitutional corporations (paragraph 40(2)(a) of the Act).

Human rights implications

This Rule engages, or may engage, the following rights:

- the right to an adequate standard of living and to continuous improvement of living conditions – Article 11 of the International Covenant on Economic, Social and Cultural Rights (ICESCR)

- the right to privacy – Article 17 of the International Covenant on Civil and Political Rights (ICCPR)
- the right not to incriminate oneself – Article 14(3)(g) of the ICCPR.

The Rule will primarily regulate entities rather than individuals

As noted at paragraph 1.11 of the Parliamentary Joint Committee on Human Rights – Guide to Human Rights, published in June 2015, which is a freely available document that outlines the key human rights that form part of the Parliamentary Joint Committee on Human Rights’ mandate (available at

https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Human_Rights/Guidance_Notes_and_Resources):

“Under the UN human rights treaties, human rights belong to individuals and groups of individuals. The treaties do not confer rights on companies or other incorporated bodies.”

While the Rule purports to place various obligations on “persons” (including applicants for the FSSP), generally it uses that term to denote a body corporate refinery operator (see the definition of “person” under sections 2B and 2C of the *Acts Interpretation Act 1901*).

Specifically, the classes of “persons” and “refinery operators” that will be regulated under the Rule include:

- “constitutional corporations” as defined under section 5 and paragraph 40(2)(a) of the Act; and
- “Australian controlling corporations” as defined under section 5 and paragraph 8(2)(a) of the Act.

As such, there are very few (if any) provisions of the Rule that regulate and consequently limit the human rights of individuals.

Right to an adequate standard of living – Article 11 ICESCR

Despite the fact the Rule does not generally regulate the conduct of individuals, it nevertheless engages positively with the right to an adequate standard of living and to continuous improvement of living conditions. This is achieved by alleviating the risks to fuel supply currently borne by Government and consumers.

The Rule will support domestic refinery operators to convert crude oil to key transport fuel products thereby supporting fuel-dependent and critical industries as well as Australian households.

Ensuring the ongoing commercial viability of domestic fuel refiners will offer protection during extreme disruptions to fuel supply to Australia. The proposed reforms are therefore likely to ensure the availability and accessibility of the energy resources that are essential to the realisation of the right to an adequate standard of living. They will also help to fulfil

Australia's obligation under Article 2.1 of the ICESCR to take reasonable measures within its available resources to progressively secure broader enjoyment of this right.

Right to privacy – Article 17 ICCPR

While noting that the Rule will primarily regulate the conduct of entities that are unlikely to be individuals, out of an abundance of caution, consideration has been given to the possibility that the Rule engages the right to privacy of individuals.

Under Part 6 (Reporting and notification obligations) of the Rule, persons (i.e. refinery operators) will be subject to various mandatory reporting and notification obligations.

The nature of the information required to be provided under these clauses will almost solely relate to refinery operations, fuel production volumes, and other matters relating to the business of refining fuel. For example, under sections 16, 17 and 18 of the Rule, refinery operators are required to report or notify the Secretary of the following:

- reasons why a refinery has failed to meet the refining requirements under subsection 7(2) of the Rule in the preceding quarter;
- reasons why no FSSP fuel was refined at a committed refinery in the preceding quarter;
- specific kinds of information relating to either a force majeure event or material adverse change, as applicable, including evidence to support a conclusion that the event or change has caused the committed refinery to become commercially or operationally unviable, any steps taken or proposed to be taken to prevent or limit the effect of the event or change, and the costs of addressing the event or change;
- if a force majeure event or material adverse change has occurred, or is likely to occur, that has the potential to result in the closure of the refinery;
- if a change has occurred, or is likely to occur, for an Australian controlling corporation who has provided a deed of security for the refinery operator that impacts, or is likely to impact, the ability for that corporation to fulfil its obligations under the deed.

It is highly unlikely any personal information about identifiable individuals will be collected under any of the abovementioned reporting and notification provisions of the Rule. Therefore, it is unlikely the Rule engages or limits the right to privacy.

Right not to incriminate oneself – Article 14(3)(g) ICCPR

While noting the matters referred to above regarding the fact the Rule will primarily regulate entities that are not individuals, for completeness consideration has been given to whether the obligations established under the Rule to report or notify certain matters potentially engage the right not to incriminate oneself.

It is noted that any obligation to “report” or “notify” specified matters is intended to only relate to information relevant to the FSSP scheme and it is not the policy intention that the relevant sections (see Part 6 of the Rule) would abrogate ordinary common law privileges, such as the privileges against self-incrimination, self-exposure to a civil penalty and legal professional privilege. Accordingly, the Rule does not limit the right of individuals not to incriminate oneself.

Conclusion

This instrument is compatible with human rights because it considerably promotes the protection of the rights to an adequate standard of living and to continuous improvement of living conditions. While there are very few provisions of the Rule that regulate or engage the human rights of individuals, to the extent that it may limit human rights, those limitations are reasonable, necessary and proportionate.

The Hon Angus Taylor MP

Minister for Energy and Emissions Reduction

Fuel Security RIS – Addendum in relation to Fuel Security Services Payment (FSSP) Rule and Petroleum and Other Fuels Reporting (POFR) Amendment FSSP Rule

Outline

On 26 May 2021, the Government published a Regulation Impact Statement (RIS) attached to the *Fuel Security Act 2021* (the Act). This RIS addendum provides additional information and analysis on one measure of the Act, the Fuel Security Services Payment (FSSP). The addendum addresses the estimated regulatory costs and benefits associated with the FSSP to affected entities.

This addendum notes that the regulatory costs will be minor in comparison to the financial support and benefits that will be received by affected entities.

About the FSSP

The Government's FSSP measure intends to support and maintain an onshore, sovereign refining capability by providing a capped production payment to refineries on a cent per litre basis sufficient to ensure they do not make a loss for primary transport fuels (petrol, diesel and jet fuel). Payments would not be made to refiners during times when they are making a profit.

The FSSP recognises the critical role refineries play to Australia's fuel security framework. Other important benefits achieved through the FSSP include retaining jobs in the refinery sector and maintaining support for both upstream and downstream sectors, such as the agricultural industry and the petrochemical industry.

In return for funding support, refiners will make a commitment to continue refining until at least 30 June 2027, with an option to extend to 2030.

The FSSP will be variable and tied to external market conditions, switching on and off to provide support only when refinery margins are poor.

Requirements for applicants receiving FSSP

The FSSP poses limited ongoing regulatory impost on affected entities. Importantly, it is a voluntary scheme whereby refiners may apply to be included, and in doing so accept the regulatory impost associated under the Act and the Fuel Security (Fuel Security Services Payment) Rule 2021 (the Rule). The anticipated regulatory impost is detailed below.

Applications

Eligible FSSP industry participants will be required to make a one-off application to be approved by the relevant Minister to receive the support. Applicants will have to adhere to certain criteria prescribed by the Act and the Rule, including but not limited to providing basic business details of the entity, historical data on refining of FSSP fuels, and either a security from their parent companies or a bank guarantee in relation to the commitment to fulfil repayment obligations under the Act.

Reporting and payments

If approved, refiners will be required to report production volumes of FSSP fuels to receive a quarterly payment (subject to profit margins). The report must be provided to the Secretary shortly after the end of each quarter.

Given refiners can leverage monthly production data they currently report under the *Petroleum and Other Fuels Reporting Act 2017* (POFR Act) to prepare the FSSP quarterly report, the additional reporting burden is expected to be minimal.

Approved FSSP participants will be paid quarterly in arrears. The FSSP payment rate will be calculated by the Department of Industry, Science, Energy and Resources, in accordance with the method prescribed by the Rule, at the end of each quarter. The rate will be applied to the production volumes of FSSP fuels the refiner produced during that period.

Additionally, it is intended that refiners will be required to submit an audit report by 30 September 2022 for the first financial year of payments (starting 1 July 2021). Subsequent audit reports may be required if there are concerns about the accuracy of data reported under the POFR Act.

A registered greenhouse and energy auditor must prepare the audit report in accordance with the requirements for reasonable assurance engagements under the *National Greenhouse and Energy Reporting (Audit) Determination 2009*.

Number of entities that would benefit from the FSSP

Under eligibility arrangements it is likely only the two major oil refineries will be eligible for the FSSP. However, the Act allows new market entrants to receive the FSSP, if criteria under the Rule are met.

The two major oil refineries, Ampol and Viva Energy, currently employ an estimated 1,250 workers. These jobs will benefit from additional security as a result of the FSSP.

In addition, the FSSP will support jobs directly and indirectly in the petrochemical industry. For example, the LyondellBasell polypropylene plant, which relies on Geelong's Viva refinery, employs approximately 2,055 Australians directly and indirectly.

Obligations that would be placed on participating refineries

The primary ongoing obligation of the scheme requires approved FSSP participants to commit to repaying amounts received if the refinery ceases refining FSSP fuels before the end of their commitment period. Only under very limited circumstances, that have caused refineries to be operationally or commercially unviable for a continued period, refiners will not be required to repay amounts received.

There would be some administration imposed on refineries associated with repayments, but only in these unlikely circumstances as noted above.

Anticipated participation costs and benefits

Regulatory and administrative costs for participants are expected to be minimal. The benefits in the form of payments when they are needed, would significantly outweigh the regulatory impost.

To reduce the regulatory burden, FSSP production information will be based on data refiners are already required to submit under the POFR Act, as well as the additional quarterly production report based on the same or similar information.

One-off costs

Applications for the FSSP (anticipated costs):

- The application will likely take one to two people up to one week (full time) to write the application and collate supporting materials, including quality assurance and legal checks. Two eligible refiners will make applications (total up to 140 hours).
- Senior executive clearances for the application within each organisation, will take around half a day each x2 entities (total up to 8 hours).

Total anticipated costs – approximately \$11,000.¹

Audit reports:

- Procuring and requesting an auditor will take approximately one full day x2 entities (15 hours)
- Estimated average registered greenhouse energy auditor fees x2 entities (\$55,000)
- Clearance timeframes, including through senior executive to verify the audit report would be up to one full day x2 entities (15 hours)

Total anticipated costs – approximately \$112,000.²

Ongoing costs

Quarterly reports:

- Assuming the quarterly reports of FSSP production volumes will take one person one day, to write up the quarterly report x2 entities (15 hours)
- Clearance timeframes, including through senior executive for reporting, will take around half a day x2 entities (8 hours)
- Over the commitment period and including option to extend (9 years)

Total anticipated costs – approximately \$60,000.³

Other costs

Other costs are expected to be minimal given the infrequency and improbability of these circumstances occurring and as such have not been estimated. These would include matters such as making an application to vary a commitment period, or exercising a right to extend a commitment period.

Benefits to refiners

Combined, the approved FSSP participants may receive up to the full \$2.047 billion in appropriated funding during any loss-making periods from 1 July 2021 to 30 June 2030 (should the option to extend get exercised), although receiving this full amount is very unlikely.

¹ The anticipated costs have been calculated according to the Office of Best Practice Regulation – Regulatory Burden Measurement Framework. The default hourly wage cost of \$73.05 has been used.

² Ibid.

³ Ibid.

Regulation impact summary

The FSSP provides a significant positive financial impact to refiners which far outweighs the minor regulatory impost.

The total regulatory burden of the FSSP is expected to be less than \$200,000 per eligible entity over the next nine years.⁴ While the total potential financial benefit of the FSSP would only be capped by the \$2.047 billion appropriated to the scheme.

⁴ Ibid.