

EXPLANATORY STATEMENT

Issued by the authority of the Minister for Climate Change and Energy

Petroleum and Other Fuels Reporting Act 2017

Petroleum and Other Fuels Reporting Amendment (Protected Information) Rules 2022

Purpose and Operation

The *Petroleum and Other Fuels Reporting Amendment (Protected Information) Rules 2022* (the Rules) amend the *Petroleum and Other Fuels Reporting Rules 2017* (the principal POFR Rules) by inserting provisions which expand the classes of government agencies to which the Secretary to the Department may disclose “protected information”. It does so by prescribing a limited set of Commonwealth and State or Territory agencies, officials of which exercise powers, or perform functions and duties, related to liquid fuels and/or emergency management.

Importantly, this includes

- the newly created Commonwealth Department of Climate Change, Energy, the Environment and Water (DCCEEW), which is currently (from 1 July 2022) responsible for administering the *Petroleum and Other Fuels Reporting Act 2017* (the POFR Act); and
- the Commonwealth Department of Industry, Science and Resources (DISR), which is responsible for administering a range of other Commonwealth laws related to liquid fuels.

It also includes State and Territory agencies with equivalent functions, and other Commonwealth agencies that have responsibilities relating to responding to liquid fuel and/or national emergencies, and managing critical liquid fuel infrastructure. Prescribing such agencies is intended to enhance the Commonwealth Government’s ability to mitigate and manage a significant disruption or threat to Australia’s liquid fuel supply chain.

Further details of the Rules are set out at **Attachment A**.

Authority

The Rules are made pursuant to the POFR Act. In particular, section 41 of that Act includes the power for the Minister to make legislative rules.

Regulatory Impact

The Office of Best Practice Regulation was consulted in relation to these Rules and advised that it considers the proposal is unlikely to have a more than minor regulatory impact, and therefore a Regulation Impact Statement is not required (reference number: OBPR22-02546).

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**.

Glossary of Terms

A Glossary of Terms is included in **Attachment A**.

Details of the *Petroleum and Other Fuels Reporting Amendment (Protected Information) Rules 2022*

GLOSSARY

Abbreviation	Definition
ACCC	Australian Competition and Consumer Commission
Department	The Department that is responsible for administering the POFR Act and principal POFR Rules (presently, the Department of Climate Change, Energy, the Environment and Water)
FS Act	<i>Fuel Security Act 2021</i>
Minister	The Minister who is responsible for administering the POFR Act and the principal POFR Rules (presently, the Minister for Climate Change and Energy)
POFR Act	<i>Petroleum and Other Fuels Reporting Act 2017</i>
principal POFR Rules	<i>Petroleum and Other Fuels Reporting Rules 2017</i> , as amended by these Rules
the/these Rules	<i>Petroleum and Other Fuels Reporting Amendment (Protected Information) Rules 2022</i>
Secretary	The Secretary of the Department that is responsible for administering the POFR Act and principal POFR Rules (presently, the Department of Climate Change, Energy, the Environment and Water)

PART 1 – PRELIMINARY

Section 1 – Name

This section specifies the name of this instrument made under the POFR Act as the *Petroleum and Other Fuels Reporting Amendment (Protected Information) Rules 2022* (the Rules).

Section 2 – Commencement

This section provides that the Rules commenced on the day after they were registered on the Federal Register of Legislation.

Section 3 – Authority

This section sets out the provision of the POFR Act under which these Rules are made. It references section 41 of the POFR Act, which confers power on the Minister to make legislative rules prescribing matters required or permitted to be prescribed, or necessary or convenient to be prescribed for carrying out the POFR Act. The power to make rules under this section includes the power to amend or revoke rules that have already been made, with any doubt about this resolved by subsection 33(3) of the *Acts Interpretation Act 1901*.

Section 4 – Schedules

This section is a machinery clause that provides that the Schedules to the Rules amend or repeal the instruments referred to therein in the manner set out in the Schedules.

Schedule 1—Amendments

Petroleum and Other Fuels Reporting Rules 2017

Item 1 – Part 3

This item repeals the spent transitional provisions in Part 3 and inserts a new Part 3 (Disclosure of protected information) into the principal POFR Rules.

The new Part inserts new section 21 (Disclosure to certain agencies), which prescribes the following Commonwealth agencies to which the Secretary may disclose protected information (as defined under the POFR Act) under section 24 of the POFR Act, where it will enable or assist the agency to exercise its powers, or perform its functions or duties:

- the Commonwealth agency responsible for administering one or more of Part VIII of the *Customs Act 1901*, the *Security of Critical Infrastructure Act 2018* (SOCI Act), or the *National Emergency Declaration Act 2020* (NED Act);
 - The note advises the reader that in July 2022, this is the Department of Home Affairs (HA), although the reference to each of the specified Acts is intended to future-proof the provision in the event future machinery of government changes allocate responsibility for administering any of those laws to another Commonwealth agency.
 - It is anticipated that the ability to share relevant protected information with HA may assist it to verify:
 - customs information pertaining to liquid fuels with data the Department collects for the fuel security services payment (reported under Subdivision C, Division 3 of Part 2 of the principal POFR Rules);
 - details of critical liquid fuel infrastructure reported under the SOCI Act, and may help assess the impacts of any cyber security incident on such assets; and
 - liquid fuel supply chain matters for the purposes of preparing for, responding to or recovering from an emergency to which a national emergency declaration (declared under the NED Act) relates, which may include circumstances relating to a national liquid fuel emergency declared under the *Liquid Fuel Emergency Act 1984*.
- the Australian Border Force (ABF), as established by the *Australian Border Force Act 2015*;
 - It is anticipated that the ability to share relevant protected information with the ABF may assist to verify information for the fuel security services payment (reported under Subdivision C, Division 3 of Part 2 of the principal POFR Rules).

- the Commonwealth agency responsible for administering the *Defence Act 1903*, other than Part IIIAAA, as it may require the information for operational reasons or to assist with a particular situation relating to national security or defence;
 - The note advises the reader that in 2022, this is the Department of Defence.
- the Commonwealth agency responsible for administering the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* (OPGGS Act);
 - The note advises the reader that in July 2022, this is the Department of Industry, Science and Resources (DISR).
 - It is anticipated that the ability to share relevant protected information with DISR will enable staff within that agency whose duties and responsibilities include administration of liquid fuels legislation, including the OPGGS Act, to continue to exercise those powers, functions and duties.
- the Commonwealth agency responsible for administering the *Fuel Security Act 2021* (FS Act);
 - The note advises the reader that in July 2022, this is the Department of Climate Change, Energy, the Environment and Water (DCCEEW).
 - It is anticipated that the ability to share relevant protected information with DCCEEW will enable staff within that agency whose duties and responsibilities include administration of liquid fuels legislation, including the FS Act, to continue to exercise those powers, functions and duties.
- the Department of Prime Minister and Cabinet (PM&C);
 - It is anticipated that the ability to share relevant protected information with PM&C may enhance the ability of the Secretary to the Department to respond to any requirements to provide emergency management information (including regarding stockpiles of liquid fuel supplies, etc.) to the Prime Minister pursuant to section 16 of the NED Act.
- the Clean Energy Regulator.
 - The data reported under the *National Greenhouse and Energy Reporting Act 2007* covers similar or related information to that reported under the POFR Act. The exchange of information could assist in verifying reported data and ensuring consistency in the Australian Government’s reporting and publication of greenhouse and energy data.

Similarly, new subsection 22(2) prescribes, for the purpose of paragraph 24(2)(d) of the Act, the State and Territory government agencies that are from time to time responsible for administering liquid fuels legislation (particularly liquid fuels emergency management legislation). This enables the Secretary (or delegate) to disclose relevant protected information (e.g. liquid fuel storage locations and volumes of fuels stored, etc.) under section 24 of the POFR Act, where it will enable or assist the relevant agency to exercise its powers, or perform its functions or duties—including to help any affected jurisdictions to manage or mitigate an actual or anticipated liquid fuel emergency. This reflects the policy intent that such information should be able to be shared with relevant State and Territory governments where appropriate, and is consistent with the joint approach to managing significant liquid fuel supply disruptions under the *Liquid Fuel Emergency Act 1984*.

Importantly, the prescription of these Commonwealth and State and Territory bodies does not guarantee them access to data collected under the POFR Act. Information will only be shared where it is necessary to support the other agency in the exercise of its powers, functions or duties, and the Secretary retains a discretion to determine whether or not particular information should be disclosed. Matters that the Secretary will consider in the exercise of this discretion include any commercial sensitivity with the information.

The prescription of these Commonwealth and State and Territory bodies allows the Secretary to disclose information to them under subsections 24(1) and (4) of the POFR Act. Subsection 24(6) of the POFR Act also allows the Secretary to impose conditions in relation to data disclosed to these agencies (other than the ACCC, which is subject to its own secrecy arrangements, applied through subsection 24(9) of the POFR Act). The power to impose conditions is intended to be used to protect the information from further disclosures that may impact affected parties, and failure to comply with such conditions is an offence carrying a maximum penalty of imprisonment for 2 years (subsection 24(7) of the POFR Act). Relevant obligations under the *Privacy Act 1988* continue to apply.

Statement of Compatibility with Human Rights

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

Petroleum and Other Fuels Reporting Amendment (Protected Information) Rules 2022.

These Rules are 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 *Petroleum and Other Fuels Reporting Amendment (Protected Information) Rules 2022* (the Rules) amend the *Petroleum and Other Fuels Reporting Rules 2017* (the principal POFR Rules) by inserting provisions which expand the classes of government agencies to which the Secretary to the Department may disclose “protected information”. It does so by prescribing a limited subset of Commonwealth and State or Territory agencies, officials of which exercise powers, or perform functions and duties, related to liquid fuels and/or emergency management.

Importantly, this includes

- the newly created Commonwealth Department of Climate Change, Energy, the Environment and Water (DCCEEW), which is currently (from 1 July 2022) responsible for administering the *Petroleum and Other Fuels Reporting Act 2017* (the POFR Act); and
- the Commonwealth Department of Industry, Science and Resources (DISR), which is responsible for administering a range of other Commonwealth laws related to liquid fuels.

It also includes State and Territory agencies with equivalent functions, and other Commonwealth agencies that have responsibilities relating to responding to liquid fuel and/or national emergencies, and managing critical liquid fuel infrastructure. Prescribing such agencies is intended to enhance the Commonwealth Government’s ability to mitigate and manage a significant disruption or threat to Australia’s liquid fuel supply chain.

Human rights implications

These Rules engage, or may engage, the following rights:

- the right to privacy – Article 17 of the International Covenant on Civil and Political Rights (ICCPR)
- the right to freedom of expression – Article 19 of the ICCPR
- the right not to incriminate oneself – Article 14(3)(g) of the ICCPR.

The Rules facilitate disclosure of protected information about regulated 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.”

This is relevant, as the amendments to the principal POFR Rules made by these Rules will facilitate disclosure, in specified circumstances, of protected information about corporate entities or trusts (e.g. body corporate refinery operators, fuel importers, wholesalers or storage operators) who are regulated by the POFR Act and principal POFR Rules, rather than individuals.

Given the above, it is unlikely any provisions of these Rules will regulate or limit the human rights of individuals.

Right to privacy – Article 17 ICCPR

While noting that the Rules will predominantly facilitate sharing of information about entities that are not individuals, out of an abundance of caution, consideration has been given to the possibility that the Rules engage the right to privacy of individuals.

New Part 3 of the principal POFR Rules permits disclosure, in limited circumstances, of protected information to specified Commonwealth and State and Territory bodies.

While protected information is defined under the POFR Act as including “fuel information” (i.e. information regarding the business activities of a regulated entity; fuel products produced or held by a regulated entity; locations, control and ownership of fuel products) that is “personal information” (defined consistently with the definition of that term under the *Privacy Act 1988*), in practice, very little personal information is collected under the POFR Act. Aside from the name and contact details of an individual that may submit a fuel information report on behalf of a regulated entity, there is negligible personal information collected and therefore it is highly unlikely that personal information would be disclosed to any of the government agencies prescribed under the Rules.

Additionally, the prescription of these government bodies does not guarantee them access to data collected under the POFR Act. Rather, information may only be shared where the Secretary considers it is necessary to support the other agency in the exercise of its powers, functions or duties, and the Secretary retains a discretion to determine whether or not particular information should be disclosed. Matters that the Secretary will consider in the

exercise of this discretion include whether the information includes any personal information, and whether any such personal information may be redacted before information is disclosed.

Further, subsection 24(6) of the POFR Act also allows the Secretary to impose conditions in relation to data disclosed to these agencies (other than the ACCC which is subject to its own secrecy arrangements, applied through subsection 24(9) of the POFR Act). The power to impose conditions is intended to be used to protect the information from further disclosures that may impact affected parties, and failure to comply with such conditions is an offence carrying a maximum penalty of imprisonment for 2 years (subsection 24(7) of the POFR Act). Relevant obligations under the *Privacy Act 1988* continue to apply. Therefore, it is highly unlikely the Rules engage or limit the right to privacy.

Right to freedom of expression – Article 19 ICCPR

The Rules, so far as they interact with the wider POFR Act framework, may engage the right to freedom of expression. For example, under subsection 24(6) of the POFR Act, the Secretary has discretion to impose conditions on other entities – including the Commonwealth and State and Territory agencies that are prescribed by these Rules – when he or she discloses protected information to them. It is envisioned that the Secretary would, in certain circumstances, use this power to prohibit further recording, use or disclosure of protected information. It would also be a criminal offence punishable by up to two years imprisonment to breach a condition imposed by the Secretary under subsection 24(6) of the POFR Act.

The restrictions on record-making, publication and disclosure engage the right to freedom of expression in Article 19 of the International Covenant on Civil and Political Rights. Article 19 permits restrictions on freedom of expression as provided by law when necessary to protect public order, which includes the protection of confidential information. The restrictions on record-making, publication and disclosure are compatible with the Article as they are required to ensure that persons required to report under the POFR Act can be confident that their sensitive information will be protected and treated appropriately when it is used by the Department or another entity (including those entities prescribed by the Rules).

Given the above, the restrictions are considered compatible with Article 19 of the ICCPR because they promote the integrity of the reporting scheme, and provide appropriate protection of regulated entities' confidential information.

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

While noting the matters referred to above regarding the fact the Rules will primarily regulate entities that are not individuals, for completeness consideration has been given to whether the prescription of government agencies under the Rules to whom protected information may be disclosed potentially engages the right not to incriminate oneself.

With respect to any disclosure of protected information to prescribed entities, it is not the policy intention that this would abrogate ordinary common law privileges, such as the privileges against self-incrimination, self-exposure to a civil penalty or legal professional privilege. Accordingly, the Rules do not limit the right of individuals not to incriminate oneself.

Conclusion

This instrument is compatible with human rights because, to the extent that they may limit human rights, those limitations are reasonable, necessary and proportionate.

The Hon Chris Bowen MP

Minister for Minister for Climate Change and Energy