

EXPLANATORY STATEMENT

Issued by the Minister for Home Affairs

Customs Act 1901

Customs (Prohibited Exports) Amendment (Liquefied Natural Gas) Regulations 2022

The *Customs Act 1901* (the Act) concerns customs-related functions and is the legislative authority that sets out the customs requirements for the importation and exportation of goods to and from Australia.

Subsection 270(1) of the Act provides that the Governor-General may make regulations not inconsistent with the Act prescribing all matters, which by the Act are required or permitted to be prescribed, or as may be necessary or convenient to be prescribed, for giving effect to the Act.

Section 112 of the Act provides that the Governor-General may, by regulation, prohibit the exportation of goods from Australia. That power may be exercised by prohibiting the exportation of goods absolutely or by prohibiting the exportation of goods unless specified conditions or restrictions are complied with.

The *Customs (Prohibited Exports) Regulations 1958* (the PE Regulations) control the exportation of goods by prohibiting exportation absolutely, or by making lawful exportation subject to a permission or licence.

The Australian Domestic Gas Security Mechanism (ADGSM) is a framework in the PE Regulations for restrictions on the export of liquefied natural gas (LNG) from LNG projects where the Resources Minister has determined there is a reasonable prospect of a supply shortage in the domestic market. When the Resources Minister makes a legislative instrument invoking the framework, the export of LNG requires a permission from the Resources Minister. The permission may have conditions attached with which the holder must comply, such as the annual volume of LNG that can be exported. The volume of LNG exporters are allowed to export will take into account expected market needs, and factors driving any shortfall including the extent to which LNG projects are contributing to such an outlook.

The purpose of the *Customs (Prohibited Exports) Amendment (Liquefied Natural Gas) Regulations 2022* (Amendment Regulations) is to amend the PE Regulations to extend the operation of the ADGSM to 1 January 2030.

The ADGSM was inserted with a limited duration into the PE Regulations by the *Customs (Prohibited Exports) Amendment (Liquefied Natural Gas) Regulations 2017*. The ADGSM is currently due to sunset from the PE Regulations on 1 January 2023. The ADGSM was reviewed and the review report was published in 2020. The report recommended retaining the ADGSM until its scheduled sunset in 2023.

On 1 August 2022, the Australian Competition and Consumer Commission's (ACCC) July 2022 Gas Inquiry Interim Report was released. The report finds the outlook for the east coast gas market has significantly worsened, forecasting a shortfall of 56 PJ in 2023. To protect energy security on the east coast, the ACCC has recommended the Minister for Resources commence the process to declare 2023 a shortfall year under the PE Regulations. The ADGSM extension is required for this to occur.

The ADGSM ensures that there is a sufficient supply of gas to meet needs of Australian consumers, including households and industry, by requiring, if necessary, LNG exporters which are drawing gas from domestic market to limit exports or find offsetting sources of new gas.

The Department of Home Affairs consulted with the Department of Industry, Science and Resources (DISR) which has policy responsibility for the ADGSM. DISR undertook public consultation from 5 to 19 July 2022 concerning the proposal to extend the ADGSM to 2030. The Department received 22 written submissions from a range of stakeholder groups including LNG producers, major gas producers, gas users, foreign governments, business groups, members of the public and market regulators. Submissions demonstrated varied views on the best ways to achieve greater security of gas supply on Australia's east coast, with around half of responses supporting an extension of the ADGSM. Following consultation, it was decided that the ADGSM will be extended to 2030 but will also be reviewed in 2025.

The Amendment Regulations are a legislative instrument for the purposes of the *Legislation Act 2003*.

The Amendment Regulations commence on the day after they are registered on the Federal Register of Legislation.

Details of the Amendment Regulations are set out in **Attachment A**.

A Statement of Compatibility with Human Rights has been prepared in accordance with the *Human Rights (Parliamentary Scrutiny) Act 2011*, and is at **Attachment B**.

Details of the *Customs (Prohibited Exports) Amendment (Liquefied Natural Gas) Regulations 2022*

Section 1 - Name

This section provides that the title of the Regulations is the *Customs (Prohibited Exports) Amendment (Liquefied Natural Gas) Regulations 2022* (the Amendment Regulations).

Section 2 - Commencement

This section sets out, in a table, the date on which each of the provisions contained in the Amendment Regulations commence.

Table item 1 provides for the whole of the Amendment Regulations to commence on the day after registration on the Federal Register of Legislation.

Section 3 - Authority

This section provides that the Amendment Regulations are made under the *Customs Act 1901*.

Section 4 - Schedules

This section provides that each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

The instrument that is amended is the *Customs (Prohibited Exports) Regulations 1958* (the PE Regulations).

Schedule 1 – Amendments

Customs (Prohibited Exports) Regulations 1958

Item 1 – Subregulation 13GG(1)

Regulation 13GG requires the Resources Minister to cause a review of the operation of the ADGSM to be undertaken. Subregulation 13GG(1) provides that this review must occur during 2020. This item substitutes ‘2020’ with ‘2025’. The effect of this amendment is to provide for a further review of the ADGSM to be undertaken in 2025.

Item 2 – Paragraph 13GG(2)(e)

Paragraph 13GG(2)(e) requires the review to address whether Division 6 of the PE Regulations should be amended or repealed before 1 January 2023 and the timing of any such amendment or repeal. This item substitutes ‘1 January 2023’ with ‘1 January 2030’. This reflects the new sunset date for the ADGSM following the amendment to regulation 13GH made by item [3].

Item 3 – Regulation 13GH

Regulation 13GH provides that Division 6 of the PE Regulations, which was intended as a short term and targeted option, is repealed on 1 January 2023. This item substitutes 1 January 2023 with 1 January 2030. The amendment extends the Australian Domestic Gas Security Mechanism (ADGSM) to expire on 1 January 2030. This ensures the ADGSM remains able to be used to provide security of supply of liquefied natural gas (LNG) and alleviate future domestic gas market shortfalls.

Statement of Compatibility with Human Rights

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

Customs (Prohibited Exports) Amendment (Liquefied Natural Gas) Regulations 2022

This Disallowable Legislative Instrument 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 *Customs (Prohibited Exports) Regulations 1958* (the PE Regulations) control the exportation of goods by prohibiting exportation absolutely, or by making lawful exportation subject to a permission or licence. Division 6 of the PE Regulations provides a framework, known as the Australian Domestic Gas Security Mechanism (ADGSM), for the Resources Minister to:

- prohibit the export of liquefied natural gas (LNG) in periods where there is a reasonable prospect of a gas supply shortfall in the domestic market, and
- grant permissions to LNG exporters to export LNG over such periods.

The ADGSM is a framework in the PE Regulations for restrictions on the export of LNG from LNG projects where the Resources Minister has determined there is a reasonable prospect of a supply shortage in the domestic market. When the Resources Minister makes a legislative instrument invoking the framework, the export of LNG requires a permission from the Resources Minister. The permission may have conditions attached with which the holder must comply, such as the annual volume of LNG that can be exported. The volume of LNG exporters are allowed to export will take into account expected market needs, and factors driving any shortfall including the extent to which LNG projects are contributing to such an outlook.

The purpose of the *Customs (Prohibited Exports) Amendment (Liquefied Natural Gas) Regulations 2022* is to amend the PE Regulations to extend the operation of the ADGSM to 1 January 2030. This Disallowable Legislative Instrument amends the PE Regulations to change the repeal date of Division 6 from 1 January 2023 to 1 January 2030, and requires that the Resources Minister must cause a review of the operation to be undertaken in 2025 (previously 2020).

The ADGSM was inserted with a limited duration into the PE Regulations by the *Customs (Prohibited Exports) Amendment (Liquefied Natural Gas) Regulations 2017*. The ADGSM is currently due to sunset from the PE Regulations on 1 January 2023. The ADGSM was reviewed and the review report was published in 2020. The report recommended retaining the ADGSM until its scheduled sunset in 2023.

On 1 August 2022, the Australian Competition and Consumer Commission's (ACCC) July 2022 Gas Inquiry Interim Report was released. The report finds the outlook for the east coast gas market has significantly worsened, forecasting a shortfall of 56 PJ in 2023. To protect energy security on the east coast, the ACCC has recommended the Minister for Resources commence the process to declare 2023 a shortfall year under the PE Regulations. The ADGSM extension is required for this to occur.

The ADGSM ensures that there is a sufficient supply of gas to meet needs of Australian consumers, including households and industry, by requiring, if necessary, LNG exporters which are drawing gas from domestic market to limit exports or find offsetting sources of new gas.

Human rights implications

This Disallowable Legislative Instrument does not engage any of the applicable rights or freedoms.

Conclusion

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

The Hon Clare O’Neil MP

Minister for Home Affairs