

## **EXPLANATORY STATEMENT**

Issued by the Minister for Home Affairs

*Customs Act 1901*

*Customs (Prohibited Exports) Amendment (Liquefied Natural Gas) Regulations 2023*

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 framework under Division 6 of Part 3 of the *Customs (Prohibited Exports) Regulations 1958* (the PE Regulations) is known as the Australian Domestic Gas Security Mechanism (ADGSM). The ADGSM is a framework under which the Resources Minister (being the Minister administering the *Offshore Petroleum and Greenhouse Gas Storage Act 2006*) can restrict the export of liquefied natural gas (LNG) based on a reasonable belief doing so is necessary to prevent a supply shortage in the domestic gas market. If the Resources Minister determines such a shortfall, then the exportation of LNG is prohibited unless:

- a permission in writing to export the LNG has been granted by the Resources Minister or an authorised officer; and
- the permission is produced to a Collector.

Under section 8 of the Act, a reference to Collector is a reference to the Comptroller-General of Customs or any officer of Customs doing duty in the matter to which the expression is used. The purpose of the *Customs (Prohibited Exports) Amendment (Liquefied Natural Gas) Regulations 2023* (the Regulations) is to amend Division 6 of Part 3 of the PE Regulations to change the operation of the ADGSM from being applicable to a forthcoming domestic shortfall year to being applicable to a forthcoming domestic shortfall quarter of a year. Quarterly consideration of domestic shortfalls allows the Government to more effectively respond to potential shortfalls in the domestic market. The Regulations provide Government with the ability to respond faster to real-world threats to domestic gas supply. The Regulations do so by enabling a gas shortfall to be declared, if necessary, four times each year on a quarterly basis (in contrast to the current Regulations once per year) to avert gas supply shortfalls in the domestic market.

The Department of Home Affairs (the Department) consulted with the Department of Industry, Science and Resources (DISR) on the making of the Regulations. The Resources Minister was also consulted on the making of the proposed Regulations. DISR conducted

targeted and public consultation to develop the Regulations. Public consultation was undertaken by DISR on the Regulations twice:

- in August 2022, on the security of Australia’s domestic gas markets (commonly referred to as ‘the ADGSM Review’); and
- in February 2023, on draft guidelines setting out the operation of the reformed ADGSM (ADGSM Guidelines consultation).

Fifty-six entities provided submissions to the ADGSM Review, including major trade partners, six gas infrastructure companies, four gas producers, LNG exporters and joint venture partners, in addition to industry bodies and members of the general public. The responses generally reflected the role that gas plays in their businesses or activities and informed the evaluation of the options considered and the ADGSM reforms announced by Government as part of the October 2022-23 Budget.

Twenty-nine entities provided submissions to the ADGSM Guidelines consultation. All but eight respondents were from the Australian gas industry or foreign governments with an interest in continued uninterrupted LNG trade with Australia. The other eight submissions were from large gas users and their representatives, other industry bodies (for example, representing the financial sector), a non-government organisation and a university. One of the common criticisms in the submissions was that the Minister should not be able to declare a shortfall quarter in a quarter in which a shortfall was not forecast to occur. This was proposed in subsection 10(8) of the consultation version of the Guidelines to allow for the transportation and storage of gas close to major demand centres ahead of peak demand periods. Based on stakeholder feedback, this approach was not adopted in the Regulations.

The PE Regulations are made solely for the purposes of section 112 of the Act and are not subject to sunseting by operation of table item 21 in section 12 of the *Legislation (Exemptions and Other Matters) Regulation 2015*. Notwithstanding this, the ADGSM will be reviewed in 2025 to consider whether it is meeting its objectives, whether it should be amended or whether it is no longer required. Furthermore, regulation 13GG provides that Division 6 of the PE Regulations will be repealed on 1 January 2030.

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

The Regulations commence immediately after this instrument is registered on the Federal Register of Legislation.

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

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

Authority: Subsections 270(1) and 112(1) of the  
*Customs Act 1901*

**Details of the Customs (Prohibited Exports) Amendment (Liquefied Natural Gas) Regulations 2023**

**Section 1 – Name**

This section provides that the title of the Regulations is the *Customs (Prohibited Exports) Amendment (Liquefied Natural Gas) Regulations 2023* (the Regulations).

**Section 2 – Commencement**

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

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

**Section 3 – Authority**

This section outlines that the Regulations are made under the *Customs Act 1901* (the Act).

**Section 4 – Schedules**

This section is the formal enabling provision for the Schedule to the Regulations and 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 being amended is the *Customs (Prohibited Exports) Regulations 1958* (the PE Regulations).

**Schedule 1 – Amendments**

**Part 1–Main amendments**

***Customs (Prohibited Exports) Regulations 1958***

**Item [1] – Regulation 13GB**

Currently, subregulation 13GE(1) of the PE Regulations authorises the Resources Minister (being the Minister administering the *Offshore Petroleum and Greenhouse Gas Storage Act 2006*) to determine a forthcoming calendar year as a domestic shortfall year. In a domestic shortfall year, exports of liquefied natural gas (LNG) are prohibited unless the exporter has received written permission from the Resources Minister, and produced it to the Collector (being either the Comptroller-General of Customs or any officer doing duty in the matter in relation to which the expression is used). The Resources Minister’s determination of a forthcoming calendar year must be made on or before 1 November in the preceding year.

The amendments made by items [6] and [9] of the Regulations have the effect that the Resources Minister may determine, via a notifiable instrument, that a forthcoming quarter is a domestic shortfall quarter. If a domestic shortfall quarter is determined, the exportation of LNG from Australia is prohibited during the domestic shortfall quarter unless, (i) a permission in writing to export the liquefied natural gas has been granted by the Resources Minister or an authorised officer, and (ii) the permission is produced to the Collector.

The difference between the current authority of the Resources Minister under regulation 13GE of the PE Regulations and the authority in the Regulations, is that the period to be determined as a domestic shortfall is changed from a forthcoming domestic shortfall year to a forthcoming domestic shortfall quarter.

Item [1] amends regulation 13GB of the PE Regulations to insert a definition for “domestic shortfall quarter”. This term is defined to mean a quarter determined by the Resources Minister under sub-regulation 13GE(1) to be a domestic shortfall quarter.

The purpose of this amendment is to complement the amendments made by items [6] and [9] of the Regulations.

#### **Item [2] – Regulation 13GB (definition of *domestic shortfall year*)**

Consequent to the amendments made by items [1], [6] and [9] of the Regulations to change the domestic shortfall period that may be determined by the Resources Minister from a forthcoming calendar year to a forthcoming calendar quarter, the definition of “domestic shortfall year” is redundant, and is repealed by item [2] of the Regulations.

#### **Item [3] – Regulation 13GB (definition of permission)**

The amendments made by items [6] and [9] of the Regulations have the effect that the Resources Minister may determine via a notifiable instrument that a forthcoming quarter is a domestic shortfall quarter and if so, determine the exportation of LNG from Australia is prohibited during the domestic shortfall quarter unless permission in writing to export the LNG has been granted by the Resources Minister or an authorised officer, and the permission is produced to the Collector.

Currently, the term “permission” is defined under regulation 13GB of the PE Regulations and means permission to export LNG during a domestic shortfall year. Item [3] of the Regulations amends this definition such that domestic shortfall year is replaced with a domestic shortfall quarter.

The purpose of this amendment is to complement the amendments made by items [6] and [9] of the Regulations.

#### **Item [4] – Regulation 13GB**

This item inserts a definition of a “quarter” into regulation 13GB of the PE Regulations. The term “quarter” means a period of 3 months beginning on 1 January, 1 April, 1 July or 1 October.

The amendments made by items [6] and [9] of the Regulations have the effect that the Resources Minister may determine via a notifiable instrument that a forthcoming quarter is a domestic shortfall quarter and if so determine, the exportation of LNG from Australia is prohibited during the domestic shortfall quarter unless a permission in writing to export the liquefied natural gas has been granted by the Resources Minister or an authorised officer, and the permission is produced to the Collector.

The purpose of this amendment is to complement the amendments made by items [6] and [9] by making clear when a quarter that may be determined as a domestic shortfall quarter begins.

### **Items [5], [7], [8] and [10]**

These items amend the provisions identified in the following table to in effect omit the reference to “year” and substitute with “quarter”.

Regulation 13GC (heading)
Subregulation 13GC(1) (note)
Regulation 13GE (heading)
Subregulation 13GE(3)

The amendments made by items [6] and [9] of the Regulations have the effect that the Resources Minister may determine via a notifiable instrument that a forthcoming quarter is a domestic shortfall quarter and if so, determine the exportation of LNG from Australia is prohibited during the domestic shortfall quarter unless permission in writing to export the LNG has been granted by the Resources Minister or an authorised officer, and the permission is produced to the Collector.

The purpose of the amendments made by these items is to reflect the change from a “domestic shortfall year” to “domestic shortfall quarter” as made by item [9].

### **Item [6] – Subregulation 13GC(1)**

Subregulation 13GC(1) of the PE Regulations prohibits the exportation from Australia of LNG for the period determined by the Resources Minister under subregulation 13GE of the PE Regulations.

The amendments outlined in item [9] of the Regulations amend regulation 13GE of the PE Regulation such that, instead of determining a forthcoming domestic shortfall year, the Resources Minister is authorised to determine forthcoming domestic shortfall quarters.

The purpose of this amendment is to complement the amendments made by item [9] of the Regulations by ensuring that the change from a forthcoming domestic shortfall year to forthcoming domestic shortfall quarters in regulation 13GE of the PE Regulations is also reflected in regulation 13GC of those regulations. The effect of item [6] is therefore to prohibit the export of LNG in a domestic shortfall quarter, unless permission is granted by the Resources Minister or authorised officer, and that permission is produced to the relevant Collector.

## **Item [9] – Subregulations 13GE(1) and (2)**

The framework under Division 6 of Part 3 of the PE Regulations, known as the ADGSM, is a framework under which the Resources Minister can restrict the export of LNG based on a reasonable belief doing so is necessary to prevent a supply shortage in the domestic gas market (shortfall). If the Resources Minister determines such a shortfall, then the exportation of LNG is prohibited unless:

- a permission in writing to export the LNG has been granted by the Resources Minister or an authorised officer; and
- the permission is produced to a Collector.

Under section 8 of the Act, a reference to Collector is a reference to the Comptroller-General of Customs or any officer of Customs doing duty in the matter to which the expression is used.

Regulation 13GE of Division 6 of Part 3 of the PE Regulations concerns the circumstances under which the Resources Minister may determine a shortfall and the frequency in which a shortfall may be determined by the Minister.

This item repeals and substitute subregulations 13GE(1) and (2) of the PE Regulations.

Subsection 13GE(1) allows the Resources Minister to determine a quarter to be a domestic shortfall quarter, increasing the number of times that a shortfall may be determined by the Resource Minister up to a maximum of four times a year from once annually. The requirement that the determination is to be contained in a notifiable instrument that is registered on the Federal Register of Legislation is retained.

The global energy market, which interacts with Australia’s domestic gas market, has become more unpredictable as it transitions to cleaner forms of energy. The Regulations provide Government with the ability to respond faster to real-world threats to domestic gas supply. Enabling a gas shortfall to be declared, if necessary, four times each year (in contrast to the current Regulations that allow for this to occur once per year) would avert gas supply shortfalls in the domestic market.

The Resources Minister is only able to determine a domestic shortfall quarter if the four conditions in subregulation 13GE(2) are met. These conditions are set out in the four paragraphs under subregulation 13GE(2).

Where the Resources Minister determines a domestic shortfall quarter, under subregulation 13GC(1), the exportation of LNG is prohibited unless a permission in writing to export the LNG has been granted by the Resources Minister or an authorised officer, and the permission is produced to a Collector.

*Paragraph 13GE(2)(a) – The Resources Minister has reasonable grounds*

Paragraph 13GE(2)(a) replicates the condition under existing subparagraph 13GE(2)(a)(i). This paragraph requires that the Resources Minister must have

reasonable grounds to believe that there will not be a sufficient supply of natural gas for Australian consumers during the quarter unless exports are controlled.

The condition under existing subparagraph 13GE(2)(a)(ii) is not replicated in the Regulations. That subparagraph refers to LNG exports contributing to a lack of supply of natural gas for Australian consumers. Subparagraph 13GE(2)(a)(i) of the existing PE Regulations is replicated in paragraph 13GE(2)(a) of the Regulations, and refers to the Resources Minister having (i) reasonable grounds to believe that a shortfall will occur if LNG exports are not controlled and (ii) exports of LNG would contribute to the lack of supply. These two elements of the existing test are effectively the same, and subparagraph 13GE(2)(a)(ii) is therefore removed under the Regulations to avoid duplication. The change is not intended to alter the meaning of the provision.

Under the condition, it continues to be intended that the Resources Minister considers Australian consumers in each part of the Australian domestic gas market, including each of the major gas markets that together comprise the Australian domestic gas market (that is, the Western, Northern, and Eastern gas markets). For the purpose of making a determination under subregulation 13GE(1), it continues to be intended that the Resources Minister may determine that Australian consumers in part of the Australian domestic gas market (for example, the Eastern gas market) would be affected by an insufficient supply of gas, notwithstanding that consumers in other parts of the Australian domestic gas market would not be affected by an insufficient supply.

The calculation involved in paragraph 13GE(2)(a) continues to require the Resources Minister to assess a forecast supply of natural gas against an assessment by the Resources Minister of the amount of gas Australian consumers need - in other words, an appropriate level of demand for gas for the market for the relevant quarter.

In assessing whether this is the case, the Resources Minister may be informed by information and advice that a domestic gas shortfall is likely in the imminent quarter. In determining whether to declare a shortfall quarter, the Resources Minister must consult with Ministers listed in paragraph 13GE(2)(b). The Minister may also consider any advice provided by the industry stakeholders, DISR and energy market bodies, such as the Australian Competition and Consumer Commission (ACCC) and Australian Energy Market Operator, and Australia's major LNG trade and investment partners.

#### *Paragraph 13GE(2)(b) – The Resources Minister has consulted*

Paragraph 13GE(2)(b) requires that, prior to making a determination, the Resources Minister must have consulted with the Prime Minister, the Treasurer, the Energy Minister, the Industry Minister, and the Trade Minister. This builds on the existing condition under paragraph 13GE(2)(b) with respect to domestic shortfall quarters in requiring the Resources Minister to also consult with the Treasurer. Subparagraph 13GE(2)(b)(ii) requires consultation with the Treasurer on the basis that advice from the ACCC informs the Resources Minister's assessment under the first condition. Furthermore, given the economic impact of the decision to declare a shortfall and that ACCC is a Treasury portfolio agency, it is appropriate that the Treasurer must also be

consulted as a condition precedent to the Resources Minister determining a domestic shortfall quarter.

*Paragraph 13GE(2)(c) – The Resources Minister notifies the public of their intention*

Paragraph 13GE(2)(c) requires that on or before the first day of the quarter immediately preceding the relevant quarter, the Resources Minister gives notice via notifiable instrument of the Resources Minister's intention to consider whether to determine the relevant quarter to be a domestic shortfall quarter. For example, the last day for the Resources Minister to make a notice of the Minister's intention to declare the quarter commencing 1 October to be a domestic shortfall quarter would be via a notifiable instrument registered on the Federal Register of Legislation on 1 July of that year.

This condition retains the minimum 30 day notice period under existing paragraph 13GE(2)(c), but adjusted for the new quarterly cycle to begin no later than the first day of the previous quarter.

Where the Resources Minister makes a notification in accordance with paragraph 13GE(2)(c), the Resources Minister would consult with stakeholders to seek information about the Australian domestic gas market. This would likely include consultation with relevant market bodies and agencies (for example, the Australian Energy Market Operator and the ACCC), all LNG stakeholders, relevant Commonwealth ministers, as well as any other stakeholders with whom the Resources Minister wishes to consult.

The Resources Minister then considers the submissions and makes a final decision about whether a forthcoming quarter should be determined as a domestic shortfall quarter.

The requirement to continue to give the public at least 30 days' notice, and the opportunity for stakeholders to provide information to the Resources Minister, is intended to ensure the Resources Minister's assessment of the state of the Australian domestic gas market is based on the best available information and advice.

*Paragraph 13GE(2)(d) – The determination is made within a specified timeframe*

Paragraph 13FE(2)(d) requires, should the Resources Minister make a determination to declare a shortfall quarter, the determination is to be made within the specified period:

- beginning 30 days after the first day of the quarter immediately preceding the relevant quarter; and
- ending on 45 days after the first day of the quarter immediately preceding the relevant quarter.

This timeframe takes into consideration the 30 days' notice period under paragraph 13GE(2)(c) and provides the Resources Minister with a period of 15 days to determine a domestic shortfall quarter under subregulation 13GE(1). Under subregulation 13GE(1), a notifiable instrument containing the determination must be registered on the Federal Register of Legislation.



For example, if the Minister wishes to determine the quarter commencing 1 October (i.e. quarter 4) to be a domestic shortfall quarter, the Resources Minister would be required to:

- (a) have the notice of the Minister's intention registered on the Federal Register of Legislation on 1 July at the latest; and
- (b) have the determination declaring the quarter commencing 1 October to be a domestic shortfall quarter registered on the Federal Register of Legislation on or between 31 July and 15 August.

## **Part 2—Application and transitional provisions**

### ***Customs (Prohibited Exports) Regulations 1958***

#### **Item [11] – In the appropriate position in Part 5**

This item amends the PE Regulations to insert new regulation 22 in the appropriate position of Part 5 of the PE Regulations. New regulation 22 applies such that:

- if a domestic shortfall quarter (the relevant quarter) determined under regulation 13GE commences on 1 July 2023, then;
- regulation 13GE applies in relation to the relevant quarter as if the reference in paragraph 13GE(2)(c) to the first day of the quarter immediately preceding the relevant quarter were instead a reference to 14 April 2023.

**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 2023**

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 Disallowable Legislative Instrument**

The *Customs (Prohibited Exports) Regulations 1958* (the PE Regulations) controls the exportation of goods by prohibiting exportation absolutely, or by making lawful exportation subject to a permission or licence. Division 6 of Part 3 of the PE Regulations provides for a framework known as the Australian Domestic Gas Security Mechanism (ADGSM). The ADGSM is a framework under which the Resources Minister (being the Minister administering the *Offshore Petroleum and Greenhouse Gas Storage Act 2006*) can restrict the export of liquefied natural gas (LNG) based on a reasonable belief that doing so is necessary to prevent a supply shortage in the domestic gas market. If the Resources Minister determines such a shortfall, then the exportation of LNG is prohibited unless: (i) a permission in writing to export the LNG has been granted by the Resources Minister or an authorised officer; and (ii) the permission is produced to a Collector.

The purpose of the *Customs (Prohibited Exports) Amendment (Liquefied Natural Gas) Regulations 2023* (the Regulations) is to amend Division 6 of Part 3 of the PE Regulations to change the operation of the ADGSM from being applicable to a forthcoming domestic shortfall year to being applicable to a forthcoming domestic shortfall quarter (a period of 3 months beginning on 1 January, 1 April, 1 July or 1 October).

The global energy market, which interacts with Australia's domestic gas market, has become more unpredictable as it transitions to cleaner forms of energy. The Regulations provide Government with the ability to respond faster to real-world threats to domestic gas supply. The Regulations enable a gas shortfall to be declared up to four times each year to avert gas supply shortfalls in the domestic market.

**Human rights implications**

The Regulations do not engage any of the applicable rights or freedoms.

**Conclusion**

The Regulations are compatible with human rights; they do not raise any human rights issues.

**Hon Clare O'Neil MP**

**Minister for Home Affairs and Cyber Security**