

Gladstone Power Station Agreement Regulation 2016

Explanatory notes for SL 2016 No.142

made under the

Gladstone Power Station Agreement Act 1993

General Outline

This regulation may be cited as the *Gladstone Power Station Agreement Regulation 2016*.

Authorising law

Section 31 of the *Gladstone Power Station Agreement Act 1993* (the GPS Act).

Policy objectives and the reasons for them

In March 1994, the then government owned Gladstone Power Station (GPS) was sold to a consortium associated with the Boyne Island Aluminium Smelter. The government at that time promised to protect the conditions of employees who were being transferred as part of the sale. In order to achieve this, the *Gladstone Power Station (Long Service Leave) Regulation 1994* and the *Gladstone Power Station (Redundancy) Regulation 1994* were enacted.

In 2004, these regulations were replaced with the *Gladstone Power Station Agreement Regulation 2004* (the Regulation) which contains these long service leave and redundancy and retrenchment provisions.

Due to the long industrial relations history with the GPS involving the transfer from a state-based regime to a national regime, the entitlements to long service leave, redundancy and retrenchment benefits for different groups of GPS employees are covered by various instruments or legislation being the:

- Regulation as the only enforceable source of long service leave entitlements (other than the base entitlements of the *Industrial Relations Act 1999*) for all groups of GPS employees; and
- an Enterprise Bargaining Agreement (EBA) under the Commonwealth *Fair Work Act 2009* for the GPS employees which broadly replicates the redundancy and retrenchment entitlements in the regulation and which is due to expire on 31 December 2016.

GPS employees and their unions are able to, and have, negotiated better benefits through their EBA than those currently contained in the Regulation. However, approximately 90 of the 250 employees at the GPS are not covered by the EBA and, for those employees, the Regulation provides a lower limit to the conditions which NRG Gladstone Operating Services Pty Ltd (NRG) (as operator and one of the owners) can offer them. If this safety net, that the Regulation offers, is to remain in place for those employees, then the Regulation will need to be remade.

The objective of this Regulation is to ensure the continuance as a safety net of the long service leave and redundancy and retrenchment provisions for a further 10-year period. Remaking the Regulation would also bring the drafting up to date for changes in law and any redundant provisions. Also addressed are updates for drafting style and format changes.

Achievement of policy objectives

The *Statutory Instruments Act 1992* (SI Act) provides that subordinate legislation expires automatically on 1 September, following the 10th anniversary of the date it was made. The Regulation was due to expire on 1 September 2014, however, the Department of Energy and Water Supply (DEWS) sought an exemption under the SI Act to allow time to investigate the impact of its expiry on the GPS's owners and operator and its employees. The Regulation has had two extensions and is now due to expire on 31 August 2016.

As the Regulation seeks to keep the provisions as a 'safety-net' and that of the original sale commitment, it is therefore desirous to retain the regulated provisions as a 'safety-net' from 1 September 2016 for a further 10-year period in order to achieve the policy objectives.

Consistency with policy objectives of authorising law

The remaking of the Regulation is consistent with the GPS Act which is an Act authorising the making of an agreement about the sale of the Gladstone Power Station, and for related purposes. Related purposes includes section 31 Regulation-making power, that the Governor in Council may make regulations for the purposes of this Act (including the State agreement).

Inconsistency with policy objectives of other legislation

The Regulation remake is not inconsistent with policy objectives of any other legislation. Remaking the Regulation is consistent with the original 1994 regulation objective, and the decision to remake the Regulation in 2004.

Benefits and costs of implementation

The Regulation is referenced in the current EBA, therefore the understanding of these provisions is well known and fully understood by the parties involved.

The Regulation seeks to keep the existing protections in place. The current EBA also offers benefits above those provided in the Regulation therefore there is no additional regulatory or financial burden on NRG. There is also no additional regulatory or financial benefit for the employees.

The original GPS agreement did not consider the erosion of employee benefits, and there is still significant scope in the EBA beyond the protections provided in the Regulation, for negotiation between the parties.

The direct impacts therefore from the Regulation on NRG or the GPS employees are limited as the provisions are not as generous as those in the current EBA. Indirect impacts may include NRG reassessing its employment requirements in the future. The Regulation's impact is limited to the operations at GPS only.

The remaking of the Regulation for a further 10-year period also has the highest net economic and social benefit of the available options given the current economic climate in northern Queensland.

Consistency with fundamental legislative principles

The remake regulation has been drafted having regard to the Fundamental Legislative Principles (FLPs) outlined in the *Legislative Standards Act 1992* and there are no matters that are inconsistent with the FLPs.

Consultation

As the Regulation was originally due to expire in 2014, the directly affected parties have been in consultation and discussion with the DEWS via letters, email and telephone correspondence and with each other over the last few years.

Stakeholders consulted include authorised representatives from NRG and GPS union representatives from the single bargaining unit covering the relevant unions of:

- Association of Professional Engineers Australia;
- Australian Manufacturing Workers' Union;
- Australian Workers Union;
- Construction, Forestry, Mining and Energy Union;
- Electrical Trades Union; and
- the Services Union.

Given the scope of the impact of the Regulation in terms of the number of directly impacted parties, with only two in the EBA negotiations, that is NRG and the unions' single bargaining unit, no additional benefit would be gained from wider community consultation.

The Queensland Treasury's Office of Industrial Relations provided industrial relations advice to the department, as well as attending teleconferences and discussions with the parties.

The Office of Best Practice Regulation has been consulted regarding the need for a Regulatory Impact Statement (RIS) and confirmed a RIS is not required.

There was broad support from the parties consulted, with the exception of NRG which advised of a preference to let the Regulation lapse. However, as noted earlier the current EBA offers benefits above those provided in the Regulation therefore there is no additional regulatory or financial burden on NRG.

Both NRG and the unions also raised some issues with the drafting of the Regulation which have been addressed.