Ozone Protection and Synthetic Greenhouse Gas (Import Levy) Amendment Act 2011

No. 164, 2011

An Act to amend the Ozone Protection and Synthetic Greenhouse Gas (Import Levy) Act 1995, and for related purposes

Note: An electronic version of this Act is available in ComLaw (http://www.comlaw.gov.au/)
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No. 164, 2011
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No. 164, 2011

An Act to amend the Ozone Protection and Synthetic Greenhouse Gas (Import Levy) Act 1995, and for related purposes

[Assented to 4 December 2011]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the Ozone Protection and Synthetic Greenhouse Gas (Import Levy) Amendment Act 2011.
2 Commencement

(1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

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<td>1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table</td>
<td>The day this Act receives the Royal Assent.</td>
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<td>However, if section 3 of the Clean Energy Act 2011 does not commence before 1 July 2012, the provision(s) do not commence at all.</td>
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Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

(2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.
Schedule 1—Amendments


1 Title

Omit “a levy on the import of HCFCs, methyl bromide and SGGs”, substitute “levies on the import of HCFCs, methyl bromide, SGGs, ODS equipment and SGG equipment”.

2 After section 2

Insert:

2A Definitions

In this Act:

*benchmark average auction charge* has the same meaning as in the *Clean Energy Act 2011*.

*carbon unit* has the same meaning as in the *Clean Energy Act 2011*.

*fixed charge year* has the same meaning as in the *Clean Energy Act 2011*.

*flexible charge year* has the same meaning as in the *Clean Energy Act 2011*.

*issue*, in relation to a carbon unit, has the same meaning as in the *Clean Energy Act 2011*.

*medical equipment* includes a pharmaceutical product.

*vintage year* has the same meaning as in the *Clean Energy Act 2011*.

2B Carbon dioxide equivalence of an amount of an SGG

(1) For the purposes of this Act, the carbon dioxide equivalence of an amount of an SGG that is a greenhouse gas is the amount of the
SGG multiplied by a value specified in the regulations in relation to that kind of SGG.

(2) For the purposes of this Act, the carbon dioxide equivalence of an amount of an SGG that is not a greenhouse gas is zero.

(3) For the purposes of this section, greenhouse gas has the same meaning as in the National Greenhouse and Energy Reporting Act 2007.

3 After section 3

Insert:

3A Import levy—SGGs

(1) If:

(a) a controlled substances licence allows the licensee to import SGGs; and
(b) the licensee imports an SGG during a quarter during which the licence is in force;

levy is imposed on the licensee in respect of that import.

(2) Subsection (1) does not apply to the import of an SGG in circumstances that are prescribed for the purposes of paragraph 13(1A)(b) of the Ozone Protection and Synthetic Greenhouse Gas Management Act 1989.

(3) Subsection (1) does not apply to the import of an SGG that is to be used for a purpose prescribed by the regulations.

(4) Subsection (1) does not apply to the import of an SGG if:

(a) the SGG is imported for the purpose of the destruction of the SGG; and
(b) the conditions specified in the regulations are satisfied.

(5) Subsection (1) does not apply to the import of an SGG contained in ODS equipment or SGG equipment.

(6) For the purposes of this section, if a licence is in force for only part of a particular quarter, that part is taken to be a quarter.
(7) The amount of levy imposed by subsection (1) on a licensee in respect of the import of an SGG in a quarter is the amount worked out using the following formula:

\[
\left( \frac{\text{Number of tonnes of the carbon dioxide equivalence of the SGG}}{} \times \text{Applicable charge rate of the SGG} \right) + \left( \frac{\text{Number of tonnes of the SGG}}{} \times \text{Prescribed rate} \right)
\]

where:

**applicable charge** means:
(a) if the quarter is in a fixed charge year—the per unit charge applicable under subsection 100(1) of the Clean Energy Act 2011 for the issue of a carbon unit with a vintage year of that fixed charge year; or
(b) if the quarter is in a flexible charge year—the benchmark average auction charge for the previous financial year.

**prescribed rate** means the rate prescribed by the regulations.

(8) The prescribed rate must not exceed $165 per tonne.

(9) If:
(a) levy is imposed by subsection (1) on a licensee in respect of an import of an SGG; and
(b) the Minister is satisfied that the SGG:
   (i) is to be used in medical equipment; or
   (ii) is to be used in the manufacture of medical equipment; or
   (iii) is to be used in a product, or in equipment, prescribed for the purposes of paragraph 8D(1)(c) of the Ozone Protection and Synthetic Greenhouse Gas Management Act 1989; or
   (iv) is to be used in the manufacture of a product, or of equipment, specified in an instrument in force under paragraph 8D(1)(d) of that Act; or
   (v) is to be used for a purpose prescribed by the regulations;
the Minister may, by written notice given to the licensee, determine that the licensee is exempt from the carbon charge component of the amount of the levy.
(10) For the purposes of subsection (9), the carbon charge component of the amount of the levy is so much of that amount as is equal to the amount worked out using the following formula:

\[
\text{Number of tonnes of the carbon dioxide equivalence charge of the SGG} \times \text{Applicable charge}
\]

where:

applicable charge means the charge that is the applicable charge for the purposes of the application of subsection (7) to the levy.

(11) In making a determination under subsection (9), the Minister must have regard to such matters as are specified in the regulations.

(12) The Minister must not make a recommendation to the Governor-General about regulations to be made for the purposes of subsection (3) unless the Minister is satisfied that:

(a) it would be impracticable to impose levy on the import of an SGG that is to be used for a purpose to be prescribed by those regulations; or

(b) a purpose to be prescribed by those regulations is a medical, veterinary, health or safety purpose.

(13) The Minister must not make a recommendation to the Governor-General about regulations to be made for the purposes of subparagraph (9)(b)(v) unless the Minister is satisfied that:

(a) it would be impracticable to require payment of the carbon charge component of the amount of levy imposed on the import of an SGG that is to be used for a purpose to be prescribed by those regulations; or

(b) a purpose to be prescribed by those regulations is a medical, veterinary, health or safety purpose.

3A Section 4 (heading)

Repeal the heading, substitute:

4 Import levy—substances other than SGGs

4 Paragraph 4(1)(a)

After “or substances”, insert “(other than an SGG)”.

6 Ozone Protection and Synthetic Greenhouse Gas (Import Levy) Amendment Act 2011
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5 Subsection 4(2)
Repeal the subsection, substitute:

(2) Subsection (1) does not apply to the import of a substance contained in ODS equipment or SGG equipment.

6 Subsection 4(3)
Repeal the subsection.

7 Paragraph 4(5)(b)
Repeal the paragraph.

8 After section 4
Insert:

4A Import levy—SGG equipment

(1) If:

(a) an ODS/SGG equipment licence allows the licensee to import SGG equipment; and
(b) the licensee imports SGG equipment during a quarter during which the licence is in force;

levy is imposed on the licensee in respect of that import.

(2) Subsection (1) does not apply to the import of:

(a) SGG equipment prescribed by the regulations; or
(b) SGG equipment specified in a legislative instrument made by the Minister.

(3) Subsection (1) does not apply to the import of SGG equipment if the import is covered by paragraph 13(6A)(b) of the Ozone Protection and Synthetic Greenhouse Gas Management Act 1989.

(4) For the purposes of this section, if a licence is in force for only part of a particular quarter, that part is taken to be a quarter.

(5) The amount of levy imposed by subsection (1) on a licensee in respect of the import of SGG equipment during a quarter is the amount worked out using the following formula:
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\[
\text{Number of tonnes of the carbon dioxide equivalence of the SGG contained in the equipment} \times \text{Applicable charge} + \left( \text{Number of tonnes of the SGG contained in the equipment} \times \text{Prescribed rate} \right)
\]

where:

**applicable charge** means:

(a) if the quarter is in a fixed charge year—the per unit charge applicable under subsection 100(1) of the *Clean Energy Act 2011* for the issue of a carbon unit with a vintage year of that fixed charge year; or

(b) if the quarter is in a flexible charge year—the benchmark average auction charge for the previous financial year.

**prescribed rate** means the rate prescribed by the regulations.

(6) The prescribed rate must not exceed $165 per tonne.

(7) For the purposes of subsection (5), disregard an SGG that is used, or for use, for a purpose prescribed by the regulations.

(8) Unless sooner revoked, a legislative instrument made under paragraph (2)(b) ceases to be in force 12 months after it is registered under the *Legislative Instruments Act 2003*.

(9) The Minister must not make a recommendation to the Governor-General about regulations to be made for the purposes of subsection (7) unless the Minister is satisfied that:

(a) it would be impracticable to work out an amount of levy by reference to an SGG that is used, or for use, for a purpose to be prescribed by the regulations; or

(b) a purpose to be prescribed by those regulations is a medical, veterinary, health or safety purpose.

4B Import levy—ODS equipment

(1) If:

(a) an ODS/SGG equipment licence allows the licensee to import ODS equipment; and

(b) the licensee imports ODS equipment during a quarter during which the licence is in force; levy is imposed on the licensee in respect of that import at the rate prescribed by the regulations.

(2) Subsection (1) does not apply to the import of ODS equipment if the import is covered by paragraph 13(6A)(b) of the Ozone Protection and Synthetic Greenhouse Gas Management Act 1989.

(3) For the purposes of this section, if a licence is in force for only part of a particular quarter, that part is taken to be a quarter.

(4) The rate of levy prescribed by the regulations must not exceed $3,000 per ODP tonne.

Note: For the purposes of subsection (4), the method of calculating ODP tonnes is set out in section 10 of the Ozone Protection and Synthetic Greenhouse Gas Management Act 1989.

(5) Section 9 of the Ozone Protection and Synthetic Greenhouse Gas Management Act 1989 does not apply for the purposes of this section.

9 Section 5

Omit “4”, substitute “3A, 4, 4A or 4B”.

10 Application of amendments

(1) Section 3A of the Ozone Protection and Synthetic Greenhouse Gas (Import Levy) Act 1995 as amended by this Act applies in relation to the import of an SGG during:
   (a) the quarter beginning on 1 July 2012; or
   (b) a later quarter.

(2) The amendments of section 4 of the Ozone Protection and Synthetic Greenhouse Gas (Import Levy) Act 1995 made by this Act apply in relation to the import of a substance during:
   (a) the quarter beginning on 1 July 2012; or
   (b) a later quarter.

(3) Section 4A of the Ozone Protection and Synthetic Greenhouse Gas (Import Levy) Act 1995 as amended by this Act applies in relation to the import of SGG equipment during:
   (a) the quarter beginning on 1 July 2012; or
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(b) a later quarter.

(4) Section 4B of the Ozone Protection and Synthetic Greenhouse Gas (Import Levy) Act 1995 as amended by this Act applies in relation to the import of ODS equipment during:
(a) the quarter beginning on 1 July 2012; or
(b) a later quarter.

[Minister’s second reading speech made in—

House of Representatives on 13 September 2011
Senate on 12 October 2011]

(184/11)

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