EXPLANATORY STATEMENT

Select Legislative Instrument 2010 No. 64

Subject- Ozone Protection and Synthetic Greenhouse Gas Management Act 1989

Ozone Protection and Synthetic Greenhouse Gas Management Amendment Regulations 2010 (No. 1)

Section 70 of the Ozone Protection and Synthetic Greenhouse Gas Management Act 1989 (the Act) provides that the Governor-General may make regulations, not inconsistent with the Act, prescribing matters required or permitted by this Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

The Act provides measures to meet Australia’s obligations under the Vienna Convention for the Protection of the Ozone Layer, the Montreal Protocol on Substances that Deplete the Ozone Layer and the United Nations Framework Convention on Climate Change. In particular, the Act provides measures to protect the ozone layer from ozone depleting substances and to minimise emissions of synthetic greenhouse gases. Under the Act, ozone depleting substances and synthetic greenhouse gases are listed as scheduled substances.

The Ozone Protection and Synthetic Greenhouse Gas Management Regulations 1995 (the Principal Regulations) control the acquisition, manufacture, use, storage and disposal of ozone depleting substances and synthetic greenhouse gases.

The Regulations will amend the Principal Regulations to streamline requirements for controlling the use of ozone depleting substances and synthetic greenhouse gases in the refrigeration and air conditioning, fire protection and methyl bromide industries.

Consultation was undertaken with relevant Commonwealth and State Government agencies and industry stakeholders during the development of the Regulation amendments. The Regulations will make a number of changes including:

• simplifying the requirements for licensed aircraft maintenance engineers;
• extending the scope of two refrigeration and air conditioning licences;
• providing greater flexibility to the relevant authority or industry Board, or the Minister when reconsidering decisions or suspending industry permits;
• increasing training requirements for all people involved in the management of halon;
• updating reporting requirements for methyl bromide users; and
• amending the title of the offence – handling refrigerant.

Details of the Regulations are set out in the Attachment.

The Regulations are a legislative instrument for the purposes of the Legislative Instruments Act 2003.
The Regulations will commence on the day after they are registered on the Federal Register of Legislative Instruments.

**Authority:** Section 70 of the *Ozone Protection and Synthetic Greenhouse Gas Management Act 1989*
Details of the *Ozone Protection and Synthetic Greenhouse Gas Management Amendment Regulations 2010 (No. 1)*:

**Regulation 1 – Name of Regulations**

This regulation provides that the title of the Regulations is the *Ozone Protection and Synthetic Greenhouse Gas Management Amendment Regulations 2010 (No. 1)*.

**Regulation 2 – Commencement**

This regulation provides for the Regulations to commence on the day after they are registered on the Federal Register of Legislative Instruments.

**Regulation 3 – Amendment of the *Ozone Protection and Synthetic Greenhouse Gas Management Regulations 1995***

This regulation provides that the *Ozone Protection and Synthetic Greenhouse Gas Management Regulations 1995* (the Principal Regulations) are amended as set out in the Schedule.

**Regulation 4 – Transitional**

This regulation provides for transitional arrangements in relation to applications for the reconsideration of decisions by the relevant authority, or the Minister for the Environment, Heritage and the Arts (the Minister) under regulations 124 and 316. The transitional arrangements will apply to an application that was received by the relevant authority, Board or the Minister prior to the commencement of these Regulations, provided a decision has not been confirmed, varied or reversed in relation to the application and not more than 30 days has elapsed since receipt of the application.

This regulation is necessary as a consequence of items 11 and 33 below.

**Schedule 1 – Amendments**

**Item 1 – Regulation 110, after definition of AMSA vessel**

This item amends regulation 110 to insert a new definition “commercial stand-alone refrigeration equipment”.

The new definition is required as a consequence of item 15 which extends the scope of the restricted domestic refrigeration and air conditioning appliances licence in table 131, regulation 131 of the Principal Regulations to allow technicians maintaining stand-alone equipment in the drinks industry to be appropriately licensed.
Item 2 – Regulation 111

This item substitutes regulation 111 with a new regulation 111 to amend the title and subsequent language of the offence – handling refrigerant, to “offence – carrying out work in relation to RAC equipment”. Subsequently, all other references throughout regulation 111, including the definition of “handle a refrigerant”, have been amended to “carries out work in relation to RAC equipment”.

This amendment addresses concerns expressed by the Senate Standing Committee on Regulations and Ordinances (the Committee) that the term ‘handling a refrigerant’ is defined in a counter-intuitive way to include doing refrigeration and air conditioning work, even when refrigerant is not present. The Committee asked for the title of the offence to be amended and this amendment will (a) address the Committee’s concerns; (b) not alter the substance of the offence; and (c) be applicable in the relevant industry context.

Item 3 – Regulation 113A(1)(c)

This item omits the term “employ” from paragraph 113A(1)(c) to insert the text “employ, or has not engaged”.

The purpose of this amendment is to clarify the scope of the offence created by subregulation 113A(1) to include situations where a person making a representation regarding a RAC service has entered into a sub-contracting arrangement, and the company or individual they have sub-contracted with does not hold an appropriate refrigerant handling licence for work of the kind that is necessary to provide that service.

Item 4 – After subregulation 113A (1)

This item inserts a new subregulation 113A(1A) into the Principal Regulations. The new subparagraph provides that a person has not committed an offence under subregulation 113A(1) if they have entered into an agreement with someone else to provide a service and the agreement that they have entered into contains a provision that stipulates that the service must be provided by the holder of a RAC industry permit which entitles the holder to provide the service.

The purpose of this new subregulation is to ensure that an individual or company that enters into an agreement with another individual or company is not deemed to have committed an offence providing that the agreement that they have entered into contains a provision that stipulates that the service must be provided by the holder of a RAC industry permit which entitles the holder to provide the service.

Item 5 – Subparagraph 121(1)(d)(iii)

This item makes a grammatical change required as a consequence of item 6 below.
Item 6 – After subparagraph 121(1)(d)(iii)

This item inserts two new subparagraphs 121(1)(d)(iv) and 121(1)(d)(v) into the Principal Regulations which set out additional information that is required to be provided in applications for RAC industry permits.

New subparagraph 121(1)(d)(iv) provides that an application for a RAC industry permit must include information regarding an applicant’s ability to meet the requirements set out in subregulation 140(3) - criteria for granting a refrigerant trading authorisation. A refrigerant trading authorisation is a type of RAC industry permit.

New subparagraph 121(1)(d)(v) provides that an application for a RAC industry permit must include information regarding an applicant’s ability to meet the requirements set out in subregulation 150(3) - criteria for a halon special permit. A halon special permit is a type of RAC industry permit because halon is sometimes used as a refrigerant.

These amendments will ensure that additional relevant information is available to the appropriate relevant authority when it decides whether to grant an application for a RAC industry permit. This amendment is needed to correct an oversight when the Principal Regulations were amended in 2005.

Item 7 – After subregulation 123(1)

This item inserts a new subregulation 123(1A) into the Principal Regulations which provides that the Minister may suspend a RAC industry permit for a fixed period of time or, until such time as the Minister is satisfied on reasonable grounds that the original reason for the suspension has been remedied and if it was stated to be remedied in a particular manner that it has been remedied in that way or in a way that is equally effective.

This will provide the Minister with more flexibility when suspending a RAC industry permit with the intention of avoiding the occurrence of continually suspending a non-compliant permit holder for the same reason.

Item 8 – Paragraph 123(2)(c)

This item substitutes paragraph 123(2)(c) with a new paragraph 123(2)(c) as a consequence of item 7 above. The purpose of new paragraph 123(2)(c) is to provide for further information to be included in a notice of suspension to a permit holder. In particular, where a permit has been suspended until the original reason for the suspension has been remedied or remedied in a certain way, the notice of suspension is required to state that the permit is suspended until that stated problem is remedied.

Item 9 – After subregulation 123(2)

This item inserts new subregulations 123(2A),(2B),(2C) and (2D) into the Principal Regulations. New subregulation 123(2A) specifies that a suspension notice that contains a statement mentioned in new subparagraph 123(2)(c)(ii) (as discussed in
item 8 above) may also state how the reason for the suspension is to be remedied. New subregulation 123(2B) stipulates that for a permit that has been suspended until the stated reason for suspension is remedied, the permit holder must tell the Minister in writing when and how the stated reason for suspension has been remedied. New subregulation 123(2C) specifies the actions the Minister must take if he/she decides that the reason for suspension has been remedied. New subregulation 123(2D) sets out what actions the Minister must take if he/she decides that the reason for the suspension has not been remedied.

The purpose of these amendments is to: (a) implement a mechanism for communicating to permit holders cases where a permit has been suspended until a stated problem is remedied; (b) enable information to be communicated by permit holders about when and how the stated thing has been remedied; and (c) enable information to be communicated to permit holders about whether their permit has been reinstated or remains suspended.

**Item 10 – Paragraph 124(1)(b)**

This item substitutes paragraph 124(1)(b) with a new paragraph 124(1)(b) which extends the categories of decision for which an application for reconsideration can be made to the Minister under paragraph 124(1)(b) of the Principal Regulations. In addition to an application being made to the Minister for reconsideration of a decision to suspend or cancel a RAC industry permit, this new paragraph also allows an application to be made to the Minister for reconsideration of a decision that a thing that contributes to the grounds for a suspension of a permit is not remedied. This amendment complements those amendments set out in items 7, 8 and 9 above.

**Item 11 – Subregulations 124(3) and (4)**

This item substitutes subregulations 124(3) and 124(4) with new subregulations 124(3) and 124(4) and adds new subregulations 124(5), 124(6) and 124(7).

These amendments facilitate the following changes to the process of reconsidering decisions:

- amendment of the term ‘Board’ to ‘relevant authority’ to ensure consistency with paragraph 124(1)(a);
- extension of the period within which the relevant authority or the Minister must make a decision on an application for reconsideration, from 30 days to 60 days;
- enable the relevant authority or the Minister to request additional information that they reasonably need to make a decision on applications for reconsideration; and
- provide that the 60-day timeframe for dealing with applications for reconsideration does not include a period of up to 30 days following a written request for additional information from the relevant authority or the Minister.

These new subregulations also outline the actions that will be taken if an applicant does not provide further information within the specified timeframe.
Item 12 – Regulation 125

This item omits the term ‘Board’ and inserts the new term ‘authority’ which is to ensure consistency with item 11 above.

Item 13 – Subparagraph 130(3)(b)(ii)

This item is required as a consequence of item 16 below as it would no longer be possible to issue licences under regulation 132 as it would have been repealed.

Item 14 – Subregulation 130(3), note

This item omits the note at the end of subregulation 130(3). This note is no longer required because all state or territory authorisations have expired since the inclusion of this note and the new arrangements have commenced.

Item 15 – Table 131, items 3 and 4

This item substitutes items 3 and 4 in table 131, in regulation 131, with new items 3 and 4 in table 131 regulation 131. New item 3 amends the title and licensee entitlements of the ‘restricted split system air conditioning installation and decommissioning licence’ to incorporate technicians wanting to install hot water heat pumps and swimming pool heaters under 18 Kilowatts. The title of the licence has been changed to a restricted heat pump installation and de-commissioning licence.

The qualification MEM20198 Certificate II in Engineering Production has been replaced by MEM20105 Certificate II in Engineering – Production.

Hot water heat pumps and swimming pool heaters under 18 Kilowatts are becoming more widespread in the Australian domestic market and there is a need to ensure that they are included within the existing licence structure. The relevant industry skills council (Manufacturing Skills Australia), other industry bodies including the plumbing, electrical, refrigeration and air-conditioning trades, and all of the state/territory plumbing and electrical regulatory bodies determined that a Certificate II qualification in split-systems installation is adequate for installing and decommissioning hot water heat pumps and swimming pool heaters under 18 Kilowatts.

New item 4 extends the scope of a restricted domestic refrigeration and air conditioning appliances licence to include work undertaken by technicians servicing refrigeration equipment in the drinks industry.

The relevant industry skills council (EE-oz Industry Skills Council) and major stakeholders in the drinks industry determined that a Certificate III qualification was unnecessary for work conducted in the drinks industry and a Certificate II qualification is adequate because technicians in the drinks industry are essentially servicing equipment that from a technical point of view are domestic refrigerators.
Item 16 – Regulation 132

This item omits regulation 132 from the Principal Regulations. Regulation 132 is no longer required because the regulation stipulates that all applications for refrigerant handling licences – experienced persons, needed to be applied for before 1 July 2006. Therefore regulation 132 is spent.

Item 17 – Paragraph 140(4)(b)

This item substitutes paragraph 140(4)(b) with a new paragraph 140(4)(b) to correct an inconsistency in the drafting of the subregulation.

Item 18 – Regulation 200, definition of Non-QPS Exemption List, paragraph (f)

This item makes a grammatical change required as a consequence of item 19 below.

Item 19 – Regulation 200, definition of Non-QPS Exemption List, after paragraph (f)

This item inserts a new paragraph (g) into the definition of Non-QPS Exemption List in regulation 200, to extend the definition of Non-QPS Exemption List to include the document called ‘Exemption List for Non QPS Applications of Methyl Bromide in 2011’, which is likely to be published in late 2010.

Item 20 – Regulation 200, definition of Non-QPS Exemption List, note

This item substitutes the previous note at the end of regulation 200 with a new note that refers the reader to the Department of the Environment, Water, Heritage and the Arts (DEWHA) generic website as opposed to the specific website address. This is the standard practice of the Office of the Legislative Drafting and Publishing due to the fact that website addresses are constantly changing. This substitution will allow the reader to search the generic website with a high degree of success in finding the relevant list.

Item 21 – Subregulation 213(6), definition of Non-QPS Intermediate Supplier List, paragraph (f)

This item will make a grammatical change required as a consequence of item 22 below.

Item 22 – Subregulation 213(6), definition of Non-QPS Intermediate Supplier List, after paragraph (f)

This item inserts a new paragraph (g) into subregulation 213(6) to extend the definition of Non-QPS Intermediate Supplier List to include the document called ‘Intermediate Supplier List for Non-QPS Applications of Methyl Bromide in 2011’, which is likely to be published in late 2010.
**Item 23 – Subregulation 213(6), definition of Non-QPS Intermediate Supplier List, note**

This item substitutes the previous note at the end of subregulation 213 (6) with a new note that refers the reader to the DEWHA generic website as opposed to a specific website address. This is the standard practice of the Office of the Legislative Drafting and Publishing due to the fact that website addresses are constantly changing. This substitution will allow the reader to search the generic website with a high degree of success in finding the relevant list.

**Item 24 – After subregulation 302(1)**

This item inserts a new subregulation 302(1A) into the Principal Regulations. The new subregulation exempts the handling of fire protection equipment for the purpose of installing or removing the equipment in an aircraft from the scope of the offence of handling an extinguishing agent, provided such work is conducted by a licensed aircraft maintenance engineer and the engineer holds an awareness competency (currently PRMPFE43A - prevent ozone depleting substance and synthetic greenhouse gas emissions).

Procedures for the removal and storage of halon from aircraft by licensed aircraft maintenance engineers are already in the *Civil Aviation Safety Regulations 1998* and the licensed aircraft maintenance engineers syllabus. This amendment is not intended to impose any further obligations on licensed aircraft maintenance engineers other than to ensure they are aware that they are dealing with substances that could be harmful to the ozone layer and the climate. This amendment was developed in consultation with the Civil Aviation Safety Authority.

**Item 25 – Subparagraph 313(1)(c)(iv)**

This item makes a grammatical change required as a consequence of item 26 below.

**Item 26 – After subparagraph 313(1)(c)(iv)**

This item inserts two new subparagraphs 313(1)(c)(v) and 313(1)(c)(vi) into regulation 313.

New subparagraph 313(1)(c)(v) provides that an application for a fire protection industry permit must include information regarding an applicant’s ability to meet the requirements set out in subregulation 331(3) – criteria for an extinguishing agent trading authorisation. An extinguishing agent trading authorisation is a type of fire protection industry permit.

New subparagraph 313(1)(c)(vi) provides that an application for a fire protection industry permit must include information regarding an applicant’s ability to meet the requirements set out in subregulation 341(3) – criteria for a halon special permit. A halon special permit is a type of fire protection industry permit.

These amendments will ensure that additional relevant information is available to the Board when it decides whether to grant an application for a fire protection industry permit.
permit. This amendment will correct an oversight when the Principal Regulations were amended in 2005.

**Item 27 – Paragraph 315(1)(b)**

This item makes a grammatical change required as a consequence of item 28 below.

**Item 28 – After paragraph 315(1)(b)**

This item inserts new paragraphs 315(1)(c) and 315(1)(d) into regulation 315. This amendment provides additional grounds on which the Minister may cancel or suspend a fire protection industry permit.

In particular, this amendment will allow the Minister to: (a) cancel or suspend an extinguishing trading authorisation, where the Minister is satisfied that the permit holder does not meet the requirements of subregulation 331(3); and (b) cancel or suspend a halon special permit, where the Minister is satisfied that the permit holder does not meet the requirements set out in subregulation 341(3).

The purpose of this amendment is to ensure that the Minister is able to cancel or suspend an extinguishing trading authorisation or a halon special permit on the grounds that the permit holder has not complied with a requirement that was a condition for the grant of these types of fire protection industry permits.

These insertions are needed to correct an oversight when the Principal Regulations were amended in 2005.

**Item 29 – After subregulation 315(1)**

This item inserts a new subregulation 315(1A) into the Principal Regulations. The new subregulation provides that the Minister may suspend a fire protection industry permit for a fixed period of time or, until such time as the Minister is satisfied on reasonable grounds that the original reason for the suspension has been remedied and if it was stated to be remedied in a particular way that it has been remedied in that way or in a way that is equally effective.

This will provide the Minister with more flexibility when suspending a fire protection industry permit with the intention of avoiding the occurrence of continually suspending a non-compliant permit holder for the same reason.

**Item 30 – Paragraph 315(2)(c)**

This item substitutes paragraph 315(2)(c) with a new paragraph 315(2)(c) as a consequence of item 29 above. This new paragraph provides for further information to be included in a notice of suspension to a permit holder. In particular, where a permit has been suspended until the original reason for the suspension has been remedied or remedied in a particular way, the notice of suspension is required to state that the permit is suspended until that stated problem is remedied.
Item 31 – After subregulation 315(2)

This item inserts new subregulations 315(2A),(2B),(2C) and (2D) into the Principal Regulations as a consequence of items 29 and 30 above. New subregulation 315(2A) specifies that a suspension notice that contains a statement mentioned in the new subparagraph 315(2)(c)(ii) (as discussed in item 30 above), may also state how the reason for the suspension is to be remedied. New subregulation 315(2B) stipulates that for a permit that has been suspended until the stated reason for suspension is remedied, the permit holder must tell the Minister in writing when and how the stated reason for suspension has been remedied. New subregulation 315(2C) specifies the actions the Minister must take if he/she decides that the reason for suspension has been remedied while new subregulation 315(2D) specifies the actions that the Minister must take if he/she decides that the reason for the suspension has not been remedied.

The purpose of these amendments is to: (a) implement a mechanism for communicating to permit holders cases where a permit has been suspended until a stated problem is remedied; (b) enable information to be communicated by permit holders about when and how the stated thing has been remedied; and (c) enable information to be communicated to permit holders about whether their permit has been reinstated or remains suspended.

Item 32 – Paragraph 316(1)(b)

This item substitutes paragraph 316(1)(b) with a new paragraph 316(1)(b) which extends the categories of decision for which an application for reconsideration can be made to the Minister under paragraph 316(1)(b) of the Principal Regulations. In addition to an application being made to the Minister for reconsideration of a decision to suspend or cancel a fire protection industry permit, this new paragraph also allows an application to be made to the Minister for reconsideration of a decision that a thing that contributes to the grounds for a suspension of a permit is not remedied. This amendment complements those amendments set out in items 29, 30 and 31 above.

Item 33 – Subregulation 316(4)

This item substitutes subregulation 316(4) with new subregulations 316(4), 316(5), 316(6) and 316(7).

These amendments facilitate the following changes to the process of reconsidering decisions:
• extension of the period within which the Board or the Minister must make a decision on an application for reconsideration, from 30 days to 60 days;
• enable the Board or the Minister to request additional information that they reasonably need to make a decision on an applications for reconsideration; and
• provide that the 60-day timeframe for dealing with applications for reconsideration does not include a period of up to 30 days following a written request for additional information from the Board or the Minister.

These new subregulations also outline the actions that will be taken if an applicant does not provide further information within the specified timeframe.
Item 34 – Subregulation 321(3), note

This item omits the note at the end of regulation 321(3) which is no longer required because all state or territory authorisations will have expired since the inception of this note.

Item 35 – Regulation 327 and Table 327

This item omits regulation 327 and table 327. This regulation and table were transitional regulations that are no longer required because any existing holders of state or territory authorisations at the time these transitional regulations were made have now expired and the new arrangements have commenced. Therefore this regulation and table are spent.

Item 36 – Subregulation 331(4)

This item omits subregulation 331(4) which is no longer required because this subregulation was intended for applicants that applied for an extinguishing agent trading authorisation before 1 November 2005. Therefore this subregulation is spent.

Item 37 – Regulation 333 and Table 333

This item omits regulation 333 and table 333. This regulation and table were transitional regulations that are no longer required because any existing holders of state or territory authorisations at the time this transitional regulation and table were made have now expired and the new arrangements have commenced. Therefore this regulation and table are spent.

Item 38 – After subregulation 341(4)

This item inserts a new subregulation 341(5) into regulation 341 which allows the Fire Protection Industry (ODS & SGG) Board to place a condition on a halon special permit if it is determined that it is necessary to do so.

The intention of the new subregulation is for the Board to be able to place a condition on a halon special permit in certain circumstances including, for example, the purpose for which the halon is to be used and about the people who are allowed to deal with the halon when it is in the permit-holder’s possession.

Item 39 – Regulation 901, Table 901, after item 16

This item inserts new items and categories into regulation 901, table 901. These new items and categories are:
17. scientific or medical equipment;
18. pre-charged parts (including compressors) for use in equipment that is or was pre-charged equipment;
19. ice machines, ice-makers and ice-cream making machines;
20. post-mix drink machines, water cooler machines (for drinking water) and frozen carbonated drink machines;
21. heat pumps (other than split system air conditioning mentioned in items 8 and 9);
22. aircraft

These new items and categories will be added to regulation 901, table 901 to increase the accuracy of reporting for specific applications of pre-charged equipment.