EXPLANATORY STATEMENT

Select Legislative Instrument 2012 No. 111

Subject -  Ozone Protection and Synthetic Greenhouse Gas (Manufacture Levy) Act 1995
            Ozone Protection and Synthetic Greenhouse Gas (Manufacture Levy) Amendment Regulation 2012 (No. 1)

Section 5 of the Ozone Protection and Synthetic Greenhouse Gas (Manufacture Levy) Act 1995 (the Manufacture Levy Act) provides that the Governor-General may make regulations for the purposes of various sections Manufacture Levy Act. The Manufacture Levy Act imposes a levy on the manufacture of ODSs and SGGs. The Ozone Protection and Synthetic Greenhouse Gas (Manufacture Levy) Regulations 2004 (the Manufacture Levy Regulations) prescribe the rates of levy in dollar amounts in relation to the weight of ozone depleting substances (ODSs) and Synthetic Greenhouse Gases (SGGs) manufactured.

The Commonwealth charges levies for the import and manufacture of hydrochlorofluorocarbons (HCFCs), synthetic greenhouse gases (SGGs) and methyl bromide (MB) to cover the costs of administering the licensing scheme for the import, export and manufacture of ODSs and SGGs.

The Manufacture Levy Act was amended by the Ozone Protection and Synthetic Greenhouse Gas (Manufacture Levy) Amendment Act 2011, to amend the way in which the levy is calculated to include the new carbon charge component which would come into effect on 1 July 2012.

The Regulation would amend the way in which the levy is calculated to include a new carbon charge component. The Regulation would also prescribe details about the global warming potential of synthetic greenhouse gases and prescribe the rates of the levy.

Details of the proposed Regulation are set out in the Attachment A.

The statement of compatibility with human rights is at Attachment B.

The Act specifies no conditions that need to be satisfied before the power to make the proposed Regulation may be exercised.

The proposed Regulation would be a legislative instrument for the purposes of the Legislative Instruments Act 2003.

The proposed Regulation would commence on 1 July 2012.

The Minute recommends that the Regulation be made in the form proposed.

Authority:  Section 5 of the Ozone Protection and Synthetic Greenhouse Gas (Manufacture Levy) Act 1995
ATTACHMENT A

Details of the Ozone Protection and Synthetic Greenhouse Gas (Manufacture Levy) Amendment Regulation 2012 (No. 1)

Section 1 – Name of Regulation

This regulation provides that the title of the Regulation is the Ozone Protection and Synthetic Greenhouse Gas (Manufacture Levy) Amendment Regulation 2012 (No. 1) (the Manufacture Levy Act).

Section 2 – Commencement

This provides that the Regulation commences on 1 July 2012.

Section 3 – Amendment of the Ozone Protection and Synthetic Greenhouse Gas (Manufacture Levy) Regulations 2004

This regulation provides that the Ozone Protection and Synthetic Greenhouse Gas (Manufacture Levy) Regulations 2004 are amended as set out in Schedule 1.

Schedule 1 – Amendment

Item 1 Regulation 5

This substitutes the existing regulation 5 for new regulations 5 to 7.

New Regulation 5 - Value for calculation of carbon dioxide equivalence for an amount of SGG

Regulation 5(1) provides a table outlining SGGs and their global warming potential amount (GWP value) for the purposes of working out the carbon dioxide equivalence of an amount of an SGG under subsection 2B (1) of the Manufacture Levy Act.

These GWP values are those agreed in the Kyoto Protocol.

The note below the table refers to the source document from which the GWP values in the table are derived from.

Regulation 5(2) provides for calculating the carbon charge component of the levy for blends of different types of SGGs and ODSs with a worked example provided for illustrative purposes.

New Regulation 6 – Manufacture Levy rate-SGGs

This defines the prescribed rate for the manufacturing of SGGs at $165 per tonne for the purposes of subsection 3A(5) of the Manufacturing Levy Act for.
New Regulation 7 – Manufacture Levy rate-substances other than SGGs

This defines the prescribed rate for manufacturing of HCFCs at $3000 per ozone depleting potential (ODP) tonne and for methyl bromide at $135 per tonne for the purposes of subsection 4(1) of the Manufacture Levy Act.
Statement of Compatibility with Human Rights

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

Ozone Protection and Synthetic Greenhouse Gas Management Regulations 1995

Ozone Protection and Synthetic Greenhouse Gas (Import Levy) Regulations 2004

Ozone Protection and Synthetic Greenhouse Gas (Manufacture Levy) Regulations 2004

These Legislative Instruments are 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 Bill/Legislative Instrument

The Legislative Instruments make technical amendments to reflect the application of an equivalent carbon price for synthetic greenhouse gases. The changes to the respective Acts were made as a part of the Australian Government’s Clean Energy Future Legislation Package in 2011.

The Ozone Protection and Synthetic Greenhouse Gas Management Act 1989 (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, the United Nations Framework Convention on Climate Change and its Kyoto Protocol. 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) currently control the acquisition, manufacture, use, storage and disposal of ozone depleting substances and synthetic greenhouse gases.

The Regulation Amendments amend the Principal Regulations to administer the application of an equivalent carbon price on synthetic greenhouse gases and other technical amendments.

Human rights implications

The Legislative Instruments have been assessed against the seven human rights instruments forming the definition of ‘human rights’ under the Human Rights (Parliamentary Scrutiny) Act 2011.

The Legislative Instruments are consistent with the civil, political, economic, social, and cultural rights conferred by those instruments; are consistent with the rights conferred by those instruments on children and persons with disabilities; and are consistent with Australia's obligations under those instruments not to discriminate on
the basis of race, not to discriminate against women, and not to allow torture or other cruel, inhuman or degrading treatment.

**Conclusion**

The Legislative Instruments are compatible with Australia's human rights obligations.

*Senator the Hon Don Farrell, Parliamentary Secretary for Sustainability and Urban Water*