

## **EXPLANATORY STATEMENT**

### **Select Legislative Instrument 2013 No. 147**

Issued by Authority of the Parliamentary Secretary for Sustainability and Urban Water

Subject – *Ozone Protection and Synthetic Greenhouse Gas Management Act 1989*

*Ozone Protection and Synthetic Greenhouse Gas Management Amendment (SGG for Manufacture) Regulation 2013*

The *Ozone Protection and Synthetic Greenhouse Gas Management Act 1989* (the Ozone Act) controls the manufacture, import, export, use and destruction of ozone depleting substances (ODSs) and synthetic greenhouse gases (SGGs). The Ozone Act implements 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 Montreal Protocol) and the *Kyoto Protocol to the United Nations Framework Convention on Climate Change* (the Kyoto Protocol).

Section 70 of the Ozone Act provides that the Governor-General may make regulations, not inconsistent with the Ozone Act, prescribing matters required or permitted by the Ozone Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Ozone Act.

Under section 13(1A) of the Ozone Act, a person must not manufacture, import or export an SGG unless the person holds a controlled substances licence, or the manufacture, import or export is in circumstances that are prescribed by the regulations.

Subsection 3A(1) of the *Ozone Protection and Synthetic Greenhouse Gas (Import Levy) Act 1995* (the Import Levy Act) and subsection 3A(1) of the *Ozone Protection and Synthetic Greenhouse Gas (Manufacture Levy) Act 1995* (the Manufacture Levy Act) impose an obligation on the holder of a controlled substances licence to pay a levy on the import or manufacture of SGGs. However, subsections 3A(1) of the Import Levy Act and the Manufacture Levy Act do not apply to the import or manufacture of SGGs in circumstances that are prescribed for the purposes of paragraph 13(1A)(b) of the Ozone Act (see subsections 3A(2) of the Import Levy Act and the Manufacture Levy Act).

The purpose of the *Ozone Protection and Synthetic Greenhouse Gas Management Amendment (SGG for Manufacture) Regulation 2013* (the Regulation) is to prescribe, for the purposes of paragraph 13(1A)(b) of the Ozone Act, circumstances whereby a controlled substances licence will not be required where SGGs are used in a manufacturing process that does not result in the emission of the SGGs. As a consequence, a person importing or manufacturing SGGs for use in these circumstances would not be liable to pay the levies imposed under the Import Levy Act or Manufacture Levy Act.

The Regulation amends the Principal Regulations to allow the Minister to give written notice to a person, allowing them to import or manufacture a quantity and kind of SGG without holding a controlled substances licence. The granting of this exemption is dependent on the Minister being satisfied that the SGG is to be used in the manufacture of a product and will be, or is likely to be, destroyed during the manufacturing process or immediately after the manufacturing process.

The amendments arose following requests from a product manufacturer for exemptions for this purpose. Following consultation with the manufacturer in relation to its request, the Department of Sustainability, Environment, Water, Population and Communities took into consideration the impact that the existing licensing and levy requirements have on stakeholders in these circumstances in preparing the Regulation. Broader consultation was not considered necessary as the Regulation would only impact a small group of SGG users and would positively benefit all affected stakeholders.

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

Details of the Regulation are set out in the Attachment.

The Regulation is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

The Regulation commences on 1 July 2013.

## **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 Amendment (SGG for Manufacture) Regulation 2013**

#### **Overview of the Legislative Instrument**

The *Ozone Protection and Synthetic Greenhouse Gas Management Amendment (SGG for Manufacture) Regulation 2013* (the Regulation) amends the *Ozone Protection and Synthetic Greenhouse Gas Management Regulations 1995* to prescribe, for the purposes of paragraph 13(1A)(b) of the *Ozone Protection and Synthetic Greenhouse Gas Management Act 1989*, circumstances in which a controlled substances licence will not be required where Synthetic Greenhouse Gases (SGGs) are used in a manufacturing process that does not result in the emission of the SGGs. As a consequence, a person importing or manufacturing SGGs for use in these circumstances would not be liable to pay the levies imposed under the *Ozone Protection and Synthetic Greenhouse Gas (Import Levy) Act 1995* and the *Ozone Protection and Synthetic Greenhouse Gas (Manufacture Levy) Act 1995*.

#### **Human rights implications**

The Regulation has been assessed against the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. The Regulation does not engage any of the applicable rights or freedoms.

#### **Conclusion**

The Regulation is compatible with Australia's human rights obligations.

**The Hon Amanda Rishworth MP,  
Parliamentary Secretary for Sustainability and Urban Water**

**Details of the *Ozone Protection and Synthetic Greenhouse Gas Management Amendment (SGG for Manufacture) Regulation 2013***

**Section 1 – Name of Regulation**

This section provides that the title of the regulation is the *Ozone Protection and Synthetic Greenhouse Gas Management Amendment (SGG for Manufacture) Regulation 2013* (the Regulation).

**Section 2 – Commencement**

This section provides for the Regulation to commence on 1 July 2013.

**Section 3 – Authority**

This section provides that the Regulation is made under the *Ozone Protection and Synthetic Greenhouse Gas Management Act 1989* (the Ozone Act).

**Section 4 – Schedule(s)**

This section provides that each instrument that is specified in a Schedule to the Regulation is amended or repealed as set out in the Schedule concerned, and any other item in a Schedule to the Regulation has effect according to its terms.

**Schedule 1 - Amendments**

**Item 1 - At the end of paragraph 3(1)(a)**

Subsection 13(1A) of the Ozone Act provides that a person must not manufacture, import or export an SGG unless:

- (a) the person holds a controlled substances licence that allows the person to do so; or
- (b) the manufacture, import or export is in circumstances that are prescribed by the regulations.

A controlled substances licence enables a person to manufacture, import or export SGGs (see subsection 13A(2) of the Act). Currently subregulation 3(1) of the *Ozone Protection and Synthetic Greenhouse Gas Management Regulations 1995* (the Principal Regulations) prescribes the circumstances for the purposes of subsection 13(1A) of the Act, with the effect that a controlled substances licence is not required for the manufacture or import of SGGs in those prescribed circumstances. In addition, subsection 3A(2) of the *Ozone Protection and Synthetic Greenhouse Gas (Import Levy) Act 1995* (the Import Levy Act) and subsection 3A(2) of the *Ozone Protection and Synthetic Greenhouse Gas (Manufacture Levy) Act 1995* (the Manufacture Levy Act) exempt the holder of a controlled substances licence from the requirement to pay the import levy and the manufacture levy where the import or the manufacture of the SGG is in circumstances that are prescribed for the purposes of paragraph 13(1A)(b) of the Act.

This item amends subregulation 3(1)(a) of the Principal Regulations to insert a new sub-paragraph 3(1)(a)(iii). Under this new sub-paragraph, the manufacture or import of the quantity and kind of the SGG referred to in regulation 3AA (inserted by Item 2 below) would be a circumstance that is prescribed for the purposes of paragraph 13(1A) of the Ozone Act. A consequence of this amendment is that importers or manufacturers of SGGs that are used for the prescribed circumstances will not require a controlled substances licence for the import or manufacture of SGGs and those importers or manufacturers will not be required to pay the import levy imposed under subsection 3A(1) of the Import Levy Act or the manufacture levy imposed under subsection 3A(1) of the Manufacture Levy Act.

## **Item 2 - After regulation 3A**

This item adds subregulation 3AA to the Principal Regulations, which details the circumstances in which the manufacture or import of SGGs is allowed without requiring a controlled substances licence, and therefore exempting an importer or manufacturer of SGGs from the obligation to pay the import levy or the manufacture levy that would ordinarily be imposed.

Subregulation 3AA(1) enables the Minister to provide written notice (referred to as an **SGG notice**) to a person allowing the person to import or manufacture a quantity and kind of SGG without the person holding a controlled substance licence. However, before issuing an SGG notice, the Minister must be satisfied that the SGG is to be used in the manufacture of a product, and that the SGG will be, or is likely to be, destroyed. This destruction *must* take place during the manufacturing process, or immediately after the manufacturing process.

The reference to ‘immediately’ in this item is not intended to apply to a situation where the SGG or effluent containing SGG is captured or collected, and then transferred to another facility for destruction.

In deciding whether the Minister is satisfied of the matters referred in subregulation 3AA(1), subregulation 3AA(2) sets out the matters to which the Minister must have regard to. These matters include, amongst other things, having regard to Australia’s obligations under the *Framework Convention on Climate Change* and the *Kyoto Protocol*. The Minister will be required to have regard to Australia’s obligations under the *Kyoto Protocol* as destruction of SGGs contributes to Australia’s *Kyoto Protocol* targets. This includes where the SGGs have been destroyed as part of the manufacturing process, as no emissions will occur.

Subregulation 3AA(3) specifies the information that must be provided to the Minister if the person to whom the SGG notice is to apply is also the person who manufactures the product. In these circumstances, the person will be required to give the Minister a statement that includes reference to the intended use of the SGG in the manufacture of a product, an explanation of the specific process used to manufacture the product, and an explanation of how the SGG will be destroyed during or immediately after the manufacturing process.

Similarly, subregulation 3AA(4) specifies the information that must be provided to the Minister if the person to whom the SGG notice is to apply is not the person who manufactures the product. In these circumstances, the person to whom the SGG notice is to apply will be required to give the Minister a purchase order or similar document for the SGG from the manufacturer of the product, and a statement from the manufacturer of the product which would include the manufacturer’s intent to use the SGG in the manufacture of a product, an explanation of the manufacturing process to be used to manufacture the product, and an explanation of how the SGG will be destroyed during or immediately after the manufacturing process.

Subregulation 3AA(5) sets the maximum time frame within which an SGG notice could be in effect; that is, a period of up to 2 years, as stated in the SGG notice. After this period has expired, a new SGG notice will be required for a person to continue importing SGG without a controlled substances licence for the specific use prescribed under subregulation 3AA(1).

Subregulation 3AA(6) allows the Minister to vary an SGG notice made under subregulation 3AA(1). Subregulation 3AA(6) also enables the Minister to revoke an SGG notice if the Minister is no longer satisfied that the SGG is to be used in the manufacture of a product, or will be, or is likely to be, destroyed during or immediately after the manufacturing process.

If the Minister decides to vary or revoke the written notice, subregulation 3AA(7) clarifies that any variation or revocation takes effect from the date stated in a notice made under subregulation 3AA(6).

Subregulation 3AA(8) allows for an application to be made to the Administrative Appeals Tribunal for review of a decision by the Minister to refuse to make a written notice under 3AA(1) or to vary or revoke a written notice under subregulation 3AA(6).

Subregulation 3AA(9) clarifies that a notice made under regulation 3AA is not a legislative instrument. This is declaratory of the law and included to assist readers – a notice made under regulation 3AA is not legislative in nature within the meaning of section 5 of the *Legislative Instruments Act 2003*.

### **Item 3 - At the end of regulation 901**

Under subsections 46A(1) and 46A(2) of the Ozone Act, a person who manufactures or imports an SGG during a quarter is required to give the Minister a report in accordance with the regulations. Regulation 901 of the Principal Regulations set out the reporting requirements for the manufacture, import or export of SGGs and SGG equipment.

This item inserts a new paragraph 901(5) into the Principal Regulations. This new paragraph adds to this regulation the requirement that if a person has imported or manufactured SGG in accordance with regulation 3A or regulation 3AA, the report may also state the quantity and kind of SGG that the person imported or manufactured during the quarter to which the report relates.