

EXPLANATORY STATEMENT

Select Legislative Instrument 2012 No. 109

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

Section 5 of the *Ozone Protection and Synthetic Greenhouse Gas (Import Levy) Act 1995* (the Import Levy Act) provides that the Governor-General may make regulations for the purposes of various sections of the Import Levy Act.

The purpose of the *Ozone Protection and Synthetic Greenhouse Gas (Import Levy) Amendment Regulation 2012 (No. 1)* is to amend the *Ozone Protection and Synthetic Greenhouse Gas (Import Levy) Regulations 2004* to include a new carbon charge component to the way in which the levy is calculated

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 ozone depleting substances (ODSs) and SGGs.

The *Ozone Protection and Synthetic Greenhouse Gas (Import Levy) Act 1995* imposes a levy on the import of ODSs and SGGs. The *Ozone Protection and Synthetic Greenhouse Gas (Import Levy) Regulations 2004* prescribe the rates of levy in dollar amounts in relation to the weight of ODSs and SGGs imported.

The proposed *Ozone Protection and Synthetic Greenhouse Gas (Import Levy) Amendment Regulation 2012 (No. 1)* makes amendments to the *Ozone Protection and Synthetic Greenhouse Gas (Import Levy) Regulations 2004* to prescribe details about the global warming potential of synthetic greenhouse gases, conditions for exemptions from levy (for metered dose inhalers, imported foam equipment or products and foam equipment or products (other than expanding polyurethane foam aerosols)) and to prescribe the applicable charge (which is the equivalent carbon price) of levy. The prescribed rate of the levy is to remain unchanged.

The Import Levy Act was amended by the *Ozone Protection and Synthetic Greenhouse Gas (Import Levy) Amendment Act 2011*, with the amendments to come into effect on 1 July 2012.

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

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

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

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 Regulation be made in the form proposed.

Authority: Section 5 of the *Ozone Protection
and Synthetic Greenhouse Gas
(Import Levy) Act 1995*

ATTACHMENT A

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

Section 1 – Name of Regulation

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

Section 2 – Commencement

This provides that the Regulation commences on 1 July 2012.

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

This provides that the *Ozone Protection and Synthetic Greenhouse Gas (Import Levy) Regulations 2004* is amended as set out in Schedule 1.

Schedule 1 – Amendments

Item 1 – Regulation 4, after the definition of *Act*

This clarifies that ‘Management Regulations’ is a short form reference for the *Ozone Protection and Synthetic Greenhouse Gas Management Regulations 1995*.

Item 2 – Regulation 5

This substitutes the existing regulation 5 for new regulations 5 to 11.

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 subsection 2B(1) of the *Ozone Protection and Synthetic Greenhouse Gas (Import Levy) Regulations 2004* (the Import Levy Act).

These GWP values are those used for the purposes of Australia’s obligations under the Kyoto Protocol to the *United Nations Framework Convention on Climate Change*.

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

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 – Conditions for exemption from import levy for SGG imported for destruction

Proposed new regulation 6 would specify the conditions for paragraph 3A(4)(b) of the Import Levy Act which provides for an exemption from Import Levy Act for SGG imported for destruction.

Proposed new regulation 6(2) describes the evidentiary requirements which would be required to be provided to the Secretary of the Department of Sustainability, Environment, Water, Population and Communities (the Secretary) to be granted an exemption from import levy for SGG imported for destruction.

Proposed new regulations 6(3) and 6(4) provides that the evidence must be provided to the Secretary before the SGG is imported and reported when destruction has taken place and in a form approved by the Secretary. These provisions are designed to ensure that in circumstances where an SGG is imported to be destroyed and the carbon charge component is not paid, that the SGG is in fact destroyed within the prescribed time.

New Regulation 7 – Import Levy-SGGs equipment

This provides that metered dose inhalers to be used for medical purposes are exempt from the levy pursuant to subsection 4A(2)(a) of the Import Levy Act. Metered dose inhalers are commonly known as asthma puffers, and are used for the treatment of asthma and chronic obstructive pulmonary disease.

New Regulation 8 – Import Levy rate-SGGs

This defines the prescribed rate for imports of SGGs at \$165 per tonne for the purposes of subsection 3A(7) of the Import Levy Act.

New Regulation 9 – Import Levy rates-substances other than SGGs

This defines prescribed rate of the levy for imports 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 Import Levy Act.

New Regulation 10 – Import Levy rate-SGG equipment

This defines the prescribed rate for imports of SGGs in SGG equipment at \$165 per tonne for the purposes of subsection 4A(5) of the Import Levy Act.

New Regulation 11 – Import Levy rate-ODS equipment

This defines the prescribed rate for imports of ODSs in ODS equipment at \$3000 per ODP tonne for the purposes of subsection 4B(4) of the Import 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