

EXPLANATORY STATEMENT

Select Legislative Instrument 2012 No. 110

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

Ozone Protection and Synthetic Greenhouse Gas Management Amendment Regulation 2012 (No. 1)

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

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

The Act is amended by the *Clean Energy Future (Consequential Amendments) Act 2011*, with the amendments to come into effect on 1 July 2012.

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.

Accordingly this Regulation amends the Principal Regulations from 1 July 2012 to exclude some products, specify reporting requirements and to specify the requirements of an application for remission and refund of the levy. The intention is to exclude products from import controls, specify quarterly reporting requirements on quantity and species of gas imported or manufactured and for the remission and refund of equivalent carbon price where the synthetic greenhouse gas is subsequently exported within 12 months of import.

The Department consulted with affected stakeholders on the reporting requirements and the exemptions and the export refund schemes. The Department consulted with Refrigerants Australia and the Air Conditioning Equipment Manufacturers Association of Australia on the reporting requirement. The Department consulted with Medicines Australia, the Plastics and Chemicals Industry Association and other affected stakeholders on exemptions to the equivalent carbon price. The export refund scheme was developed in consultation with various industries, including a technical working group of affected stakeholders which convened twice to discuss the development of the scheme with the Government.

The Act specifies no conditions that need to be satisfied before the power to make the proposed regulation maybe 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 the Regulation be made in the form proposed.

Authority: Section 70 of the Ozone Protection
and Synthetic Greenhouse Gas
Management Act 1989

ATTACHMENT A**Details of the *Ozone Protection and Synthetic Greenhouse Gas Management 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 Management Amendment Regulation 2012 (No. 1)*.

Section 2 – Commencement

This regulation provides for the regulation to commence on 1 July 2012.

Section 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 Management Regulations) are amended as set out in Schedule 1.

Schedule 1 – Amendments**Item 1 – Part 2**

This item inserts Part 2 after Part 1 to include new regulation additions at 2A (a) and (b).

2A – SGG equipment

This regulation provides for the exemptions of certain types of equipment, namely imported foam equipment or products, from the definition of SGG equipment under section 8D (1) (c) of the Act. The effect of the exemption of imported foam equipment and products from the definition of SGG equipment is that importers of these items are not required to hold licences under section 13 or make quarterly reports under section 46 of the Act. The reason for the exemption is because, at present, on import, it is not easily identifiable if foam manufactured overseas was blown with synthetic greenhouse gases, and if it was, how much synthetic greenhouse gas is in it. The regulation specifies that expanding polyurethane foam aerosols are not exempted from the definition of SGG equipment. This is because the type and amount of synthetic greenhouse gas in these products is easily identifiable.

Item 2 – Part 3 heading

Note 2 of the Management Regulations state that ‘Part 2 is intentionally not used’. This item omits this Note as these regulation amendments insert Part 2.

Item 3 – Regulation 3

This item substitutes regulation 3 with an expanded regulation, the effect of which provides for additional licence exemptions under section 13 of the Act. Regulation 3(2) and (3) are inserted which provides for equipment and conditions, respectively, for exemptions for personal imports under section 13(6A) of the Act. These are intended to allow people who own domestic ozone depleting substance/synthetic greenhouse gas (ODS/SGG) equipment in their household while living overseas to bring their household goods with them, when they move to Australia. It is intended that the equipment, which was used wholly or principally for private or domestic use in the overseas country will also be used wholly or principally for private or domestic use in Australia. It is not intended to allow an exemption for individuals buying new goods from overseas.

Regulation 3(2) lists the types of equipment that can be prescribed for the purposes of subparagraph 13(6A)(b)(ii) of the Act in relation to an exemption from the requirement to hold an ODS/SGG equipment licence. Regulation 3(2)(a) is to provide some examples of ODS/SGG equipment within other equipment (such as air-conditioning equipment contained in motor vehicle, watercraft or aircraft) which may be eligible for exemption under 13(6A), that is the requirement to hold an ODS/SGG equipment licence.

Regulation 3(3) prescribes the conditions which must be met in relation to any equipment prescribed for the purposes of subparagraph 13(6A)(b)(ii) of the Act. Regulation 3(3)(a)(i) outlines that evidence must be supplied to show that the equipment has been owned for more than 12 months. This requirement ensures that the equipment has been owned while living overseas. Regulation 3(3)(a)(ii) states that evidence must be provided that the equipment is being imported wholly or principally for private or domestic use. The intention is that a person will not gain the exemption even if they have owned the equipment for 12 months for private use.

Regulation 3(4) provides that evidence does not need to be provided that medical equipment has been owned for 12 months or more. This is because many types of personal medical equipment, for example, metered dose inhalers, are likely to have been owned for less than 12 months, but are still for domestic purposes and are therefore intended to be exempted.

Item 4 – Paragraph 4 (2) (c)

This regulation substitutes new paragraph 4(2)(c), (d) and (e) which allow further details of licences to be published on the Department of Sustainability, Environment, Water, Population and Communities website, including the conditions (if any)

imposed on the licence, the date on which the licence was granted, cancelled or surrendered and the date on which the licence expires.

Item 5 – Regulation 900

This regulation substitutes a new regulation 900 to reflect the amendments to section 46 in the Act contained in the *Clean Energy Future (Consequential Amendments) Act 2011*. The amendment to regulation 900 applies to the manufacture, import or export of scheduled substances that are not SGGs or substances in ODS equipment or SGG equipment.

Regulation 900(1) provides that a report given by a person to the Minister must be prepared in accordance with this regulation.

Regulation 900(2) provides that reports must be kept for a period of five years from the date the report is submitted to the Minister. Previously the reports were required to be kept for a period of seven years so as to be consistent with Regulation 5(2) which provides that licensees must retain records for five years from the last day of the month to which the records relate.

Regulation 900 (3) provides that certain details must be reported (for data collection on imports), including the name and address of the person, the unique identifier for the licence granted, the quarter to which the report relates, the kind and amount scheduled substance, other than SGG manufactured, imported or exported.

Item 6 – Regulation 901

This regulation substitutes new regulation 901 to support the reporting requirements in new section 46A(1), (2) and (3) of the Act. The reporting will apply for the manufacture, import or export of SGGs, ODS equipment or SGG equipment.

Regulation 901(1) provides that a report given by a person to the Minister must be prepared in accordance with this regulation.

Regulation 901(2) provides that reports must be kept for a period of five years from the date the report is submitted to the Minister. Previously reports were required to be kept for a period of seven years. This amendment will achieve consistency with Regulation 5(2), which provides that licensees must retain records five years from the last day of the month which the records relate.

Regulation 901(3) provides that certain details must be reported (for data collection on imports), including the name and address of the person, the unique identifier for the licence granted, the quarter in which the report relates, the kind and amount of scheduled substance manufactured, imported or exported.

Regulation 901(4) provides the different categories of ODS/SGG equipment under which licensees must report. These are intended to cover all known equipment types and will be used for compliance and enforcement purposes.

Part 9 heading

920 - Application for remission and refund of import levy-SGGs; 921 - Application for remission and refund of import levy-SGG equipment and 922 - Application for remission and refund of manufacture levy-SGGs

The Act contains provisions that allow the licensee to seek a refund/remission of the equivalent carbon price paid on synthetic greenhouse gases that are subsequently exported within 12 months of the import. Under the amendment to the Act, a 'controlled substances' licensee and synthetic greenhouse gases 'ODS/SGG' licensee is be able to claim a refund/remission for synthetic greenhouse gases exported by the licensee or exported by the subsequent purchaser if the conditions prescribed in regulation 920, 921 and 922 are met.

Proposed regulation 920(1), 921(1) and 922(2) respectively, provides that the licensee must apply in writing to the Minister.

Proposed regulation 920(2) prescribes the information required for the purpose of an application under section 69AA(1)(c) and (4)(c) of the Act. Proposed regulations 921(2) prescribes the information required for the purpose of an application under section 69AB(1)(c) and (5)(c) of the Act. Proposed regulations 922(2) prescribes the information required for the purpose of an application under section 69AC(1)(c) and (4)(c) of the Act.

The regulation outlines that the licensee's application must be accompanied by evidence that the levy imposed by: section 3A of the *Ozone Protection and Synthetic Greenhouse Gas (Import Levy) Act 1995* (the Import Levy Act) was paid in respect of the import of an SGG for Regulation 920; section 4A of the Import Levy Act was paid in respect of the import of SGG equipment for Regulation 921; and under section 3A of the *Ozone Protection and Synthetic Greenhouse Gas (Manufacture Levy) Act 1995* was paid in respect of the manufacture of an SGG.

Evidence needs to be provided that the SGG/SGG equipment under the import levy was exported within 12 months after the import of the SGG/ SGG equipment (section 69AA(1)(d)/ section 69AB(1)(d) of the Act) and evidence provided that the SGG was exported within 12 months after the manufacture of the SGG (section 69AC(1)(d) of the Act).

Evidence also needs to be provided that the licensee sold the SGG/SGG equipment to another person and that the other person exported the SGG/SGG equipment within 12 months after the import of the SGG/SGG equipment (section 69AA(4)(d) / section 69AB(5)(d) of the Act) and evidence needs to be provided that the licensee sold the SGG to another person and that the other person exported the SGG within 12 months after the manufacture of the SGG (section 69AC(4)(d) of the Act).

Item 7 – Further amendments-pre-charged equipment

This regulation outlines the amendments that need to be made throughout the regulations as a consequence of the removal of the definition of ‘pre-charged equipment’ from the Act and its replacement with ‘ODS equipment’ and ‘SGG equipment’.

ATTACHMENT B**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