

EXPLANATORY STATEMENT

Select Legislative Instrument 2012 No. 169

Issued by the 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 Regulation 2012 (No. 2)

The *Ozone Protection and Synthetic Greenhouse Gas Management Act 1989* (the Act) controls the manufacture, import and export of all ozone depleting substances and their synthetic greenhouse gas replacements. It also controls imports of refrigeration and air-conditioning equipment (RAC equipment) containing a hydrochlorofluorocarbon or hydrofluorocarbon refrigerant and grants the Commonwealth the power to create a nationally consistent system to control the end uses of these harmful gases.

Section 70 of 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) outline licensing requirements for persons carrying out work in relation to RAC equipment. Licensing requirements are necessary due to the potential environmental harm that ozone depleting substances and synthetic greenhouse gases may cause, and the health and safety risks associated with refrigerants. For example, refrigerants are stored at high pressure and displace oxygen when released in air.

It is generally an offence (punishable by a maximum penalty of 10 penalty units) for a person to carry out work in relation to RAC equipment unless the person holds a refrigerant handling licence. However, paragraph 111(1)(c) of the Principal Regulations allows an unlicensed person decommissioning RAC equipment to work under the supervision of the holder of the licence granted under regulation 131 or 133 of the Principal Regulations.

The *Ozone Protection and Synthetic Greenhouse Gas Management Amendment Regulation 2012 (No. 2)* (the Amendment Regulation) amends the Principal Regulations by removing paragraph 111(1)(c) to ensure that only appropriately qualified persons decommission RAC equipment. Training materials are available on the RAC industry board website and consist of a training video, booklet and accompanying multiple choice test. The practical component of the training will be overseen by the employer of the previously unlicensed person.

The Amendment Regulation revises paragraphs 140(3)(d) and 141(1)(l) to make consequential amendments to the conditions on refrigerant authorisations to reflect the changes.

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

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

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

The Department of Sustainability, Environment, Water, Population and Communities consulted the RAC industry on proposed amendments to paragraph 111(1)(c) through the March/April 2012 edition of the RAC industry newsletter entitled 'CoolChange'.

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

The Amendment Regulation commences on the day after registration on the Federal Register of Legislative Instruments.

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

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 Regulation 2012 (No. 2)*

Section 1 – Name of Regulation

This section provides that the title of the regulation is the *Ozone Protection and Synthetic Greenhouse Gas Management Amendment Regulation 2012 (No. 2)*.

Section 2 – Commencement

This section provides for the Amendment Regulation to commence on the day after it is registered on the Federal Register of Legislative Instruments.

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

This section provides that the Principal Regulations are amended as set out in Schedule 1.

Schedule 1 – Amendments

Item 1 – Paragraph 111(1)(c)

Currently, unlicensed persons can decommission RAC equipment provided they are supervised by a person granted a licence under regulation 131 or 133 of the Principal Regulations.

The effect of this amendment would be to require persons who are currently unlicensed and working under supervision to undergo training and subsequently apply for a licence to decommission RAC equipment.

Item 2 – Paragraph 140(3)(d)

Currently, paragraph 140(3)(d) provides that a restricted refrigerant trading authorisation may be granted if the applicant can demonstrate that unlicensed persons engaged in removing refrigerant from RAC equipment are supervised by a holder of a licence granted under regulation 131 or 133.

This item revises paragraph 140(3)(d) to ensure that only persons licensed under regulations 131, 133 or 134 decommission RAC equipment. A reference to regulation 134, which provides for refrigerant and air conditioner trainee licences, has been inserted to facilitate on-the-job training for currently unlicensed persons.

Item 3 – Paragraph 141(1)(l)

Currently, conditions can be placed on a restricted refrigerant trading authorisation granted under paragraph 140(1)(c) of the Principal Regulations, such as allowing an unlicensed person to remove refrigerant from RAC equipment on the proviso that they are supervised by a holder of a licence granted under regulation 131 or 133 that entitles the holder to remove refrigerant from RAC equipment.

This item revises paragraph 141(1)(l) to ensure that only the holder of a relevant licence granted under regulation 131, 133 or 134 can remove refrigerant from RAC equipment.

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 Regulation
2012 (No. 2)**

This Legislative Instrument is 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 Legislative Instrument

The Legislative Instrument makes amendments to the *Ozone Protection and Synthetic Greenhouse Gas Management Regulations 1995* to remove provisions allowing unlicensed persons working under supervision of appropriately licensed persons to decommission refrigeration and air-conditioning equipment.

Due to the potential environmental, health and safety risks associated with refrigerants currently unlicensed persons working under supervision will be required to undergo training and apply for a licence to decommission RAC equipment. This will ensure that only appropriately qualified persons decommission RAC equipment.

Human rights implications

This Legislative Instrument does not engage any of the applicable rights or freedoms.

Conclusion

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

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