

## **SUPPLEMENTARY EXPLANATORY STATEMENT**

Issued by the authority of the Minister for the Environment and Water

*Ozone Protection and Synthetic Greenhouse Gas Management Act 1989*

*Ozone Protection and Synthetic Greenhouse Gas Management Amendment (2024 Measures No.1) Regulations 2024*

The *Ozone Protection and Synthetic Greenhouse Gas Management Act 1989* (OPSGGM Act) and the *Ozone Protection and Synthetic Greenhouse Gas Management Regulations 1995* (OPSGGM Regulations) implement Australia's international obligations under the *Vienna Convention for the Protection of the Ozone Layer*, its *Montreal Protocol on Substances that Deplete the Ozone Layer* and the *United Nations Framework Convention on Climate Change*, through the control of the import, export, manufacture and use of substances covered by the OPSGGM Act.

Section 70 of the OPSGGM Act provides that the Governor-General may make regulations required or permitted by the Act or that are necessary or convenient to be prescribed for carrying out or giving effect to the Act.

The *Ozone Protection and Synthetic Greenhouse Gas Management Amendment (2024 Measures No.1) Regulations 2024* (the Amendment Regulations) is to amend the OPSGGM Regulations to:

- prohibit, from 1 July 2024, the import and manufacture of small synthetic greenhouse gas (SGG) air conditioning equipment containing or using a hydrofluorocarbon (HFC) with a global warming potential (GWP) over 750 without a licence;
- prohibit, from 1 July 2025, the import and manufacture of multi-head small SGG air conditioning equipment containing or using an HFC with a GWP over 750 without a licence;
- prescribe additional criteria for equipment licences for the import or manufacture of small SGG air conditioning equipment (from 1 July 2024) and multi-head small SGG air conditioning equipment (from 1 July 2025);
- modernise the drafting of the offence provisions in the Principal Regulations, including clarifying when an offence provision is strict liability;
- increase the penalties for offences from 10 penalty units to 50 penalty units;
- insert a mirror civil penalty provision for each offence in the Principal Regulations. The civil penalty provisions have a maximum civil penalty of 60 penalty units;
- provide a mechanism to move the list of qualifications, units of competency and standards required for a refrigerant handling licence and an extinguishing agent handling licence from the regulations to a separate legislative instrument made by the Minister; and

- impose a fee for special circumstances exemptions in the refrigeration and air conditioning context and increase the same fee in the fire protection context.

The details of the Amendment Regulations are set out in the initial Explanatory Statement.

The purpose of this Supplementary Explanatory Statement is to provide additional information relating to the application of sunseting and disallowance requirements to the Amendment Regulations, as well as the amendments relating to exceptional circumstances for granting certain equipment licences, and conditions on halon special permits.

### **Sunseting and disallowance requirements**

The Amendment Regulations are exempt from sunseting in accordance with item 1 under section 11 of the *Legislation (Exemptions and Other Matters) Regulation 2015* on the basis that the primary purpose of the Amendment Regulations is to give effect to an international obligation in force for Australia. This is an automatic exemption that applies by force of law for instruments that are in the class of legislative instruments as described. The Explanatory Statement to the *Legislation (Exemptions and Other Matters) Regulation 2015* explains that it is appropriate to exempt legislative instruments, whose sole or primary purpose is to give effect to an international obligation, from sunseting. This is because Australia's international obligations do not cease upon a unilateral sunseting process.

The Amendment Regulations are not exempt from the disallowance process and, therefore, are still subject to parliamentary scrutiny.

### **Exceptional circumstances**

Section 16 of the OPSGGM Act allows the Minister to grant a licence to a person who has applied for it in accordance with section 14. Under section 14, a person may apply to the Minister for, relevantly, an equipment licence. An equipment licence allows the licensee to import, manufacture or export specified ODS equipment or SGG equipment, as specified in the licence. Section 16 also sets out the requirements of which the Minister must be satisfied in order to grant a licence.

New regulation 3DA is made for the purposes of subsection 16(5) of the OPSGGM Act and has the effect that the Minister is only be able to grant an equipment licence allowing the import or manufacture of SGG equipment that is small SGG air conditioning equipment or multi-head small SGG air conditioning equipment if satisfied of one or more of the criteria in subregulation 3DA(2). This means that licences to import or manufacture small SGG air conditioning equipment or multi-head small SGG air conditioning equipment (from, respectively, 1 July 2024 and 1 July 2025) will generally only be able to be granted in very limited circumstances, for essential uses. It is appropriate to impose these strict limitations on licences to import or manufacture small SGG air conditioning equipment and multi-head small SGG air conditioning equipment, based on the environmental risks associated with the equipment.

One circumstance in which the Minister can grant an equipment licence to import or manufacture small SGG air conditioning equipment and multi-head small SGG air conditioning equipment is where the Minister is satisfied that both:

- a. exceptional circumstances justify granting the licence in relation to the equipment; and
- b. granting the licence would not be inconsistent with Australia's international obligations under the Montreal Protocol.

The purpose of including an exceptional circumstances criterion in regulation 3DA is to allow the Minister the flexibility to respond to emerging and unforeseen circumstances, while ensuring that Australia continues to comply with its international obligations in relation to HFCs.

Examples of exceptional circumstances could potentially include supply shortages caused by unforeseen global events (such as the recent pandemic), urgent medical, defence or diplomatic requirements that do not otherwise meet the criteria for granting a licence, certain research in the national interest, certain commercial situations that are outside the importer's control or are in the public interest, or other national emergencies. Each of these circumstances would need to be assessed on a case-by-case basis and the Minister would need to be satisfied that the particular case involved exceptional circumstances, that those exceptional circumstances justified the granting of the licence, and that granting the licence would not be inconsistent with Australia's obligations under the Montreal Protocol.

General administrative law principles will also apply to the Minister's decision whether to grant a licence based on the exceptional circumstance criterion in regulation 3DA.

### **Conditions on halon special permits**

Halons are chemicals primarily used as fire extinguishing agents, and historically used in small quantities in specialist refrigeration and air conditioning (RAC) equipment. Australia has international obligations under the Montreal Protocol to phase-out the use of halons. Globally, alternatives to halons are now available for most, but not all, halon applications. The remaining major halon uses in Australia are in civil aviation and defence fire protection applications. There are separate provisions under the OPSGGM Regulations that provide for the granting of a halon special permit in the context of RAC equipment (regulation 150) and in the context of fire protection equipment (regulation 341).

New subregulation 150(4) allows the Minister to impose a condition on a halon special permit. The intention of this amendment is to ensure consistency between regulation 150 and regulation 341. A note to subsection 150(4) sets out examples of the kinds of conditions that may be imposed on a halon special permit.

Examples of factors that the Minister may take into account when deciding whether to impose a condition under subregulation 150(4) could include matters about who and how many persons are intended to deal with the halon when it is in the permit holder's possession, and for what purpose the halon is intended to be used. The Minister may consider it necessary and appropriate to include a condition on a halon special permit to ensure that criteria of which the Minister must be satisfied to grant the permit will continue to be met after the permit is granted.

General administrative law principles will also apply to the Minister's decision whether to impose a condition on a special halon permit under subregulation 150(4).