



Ozone Protection and Synthetic Greenhouse Gas (Import Levy) Amendment Act 2011

No. 164, 2011

**An Act to amend the *Ozone Protection and Synthetic
Greenhouse Gas (Import Levy) Act 1995*, and for
related purposes**

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)

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No. 164, 2011

**An Act to amend the *Ozone Protection and Synthetic
Greenhouse Gas (Import Levy) Act 1995*, and for
related purposes**

[Assented to 4 December 2011]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Ozone Protection and Synthetic
Greenhouse Gas (Import Levy) Amendment Act 2011*.

Ozone Protection and Synthetic Greenhouse Gas (Import Levy) Amendment Act 2011 No. 164,
2011 1

2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	4 December 2011
2. Schedule 1	1 July 2012. However, if section 3 of the <i>Clean Energy Act 2011</i> does not commence before 1 July 2012, the provision(s) do not commence at all.	1 July 2012

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Amendments

Ozone Protection and Synthetic Greenhouse Gas (Import Levy) Act 1995

1 Title

Omit “a levy on the import of HCFCs, methyl bromide and SGGs”, substitute “levies on the import of HCFCs, methyl bromide, SGGs, ODS equipment and SGG equipment”.

2 After section 2

Insert:

2A Definitions

In this Act:

benchmark average auction charge has the same meaning as in the *Clean Energy Act 2011*.

carbon unit has the same meaning as in the *Clean Energy Act 2011*.

fixed charge year has the same meaning as in the *Clean Energy Act 2011*.

flexible charge year has the same meaning as in the *Clean Energy Act 2011*.

issue, in relation to a carbon unit, has the same meaning as in the *Clean Energy Act 2011*.

medical equipment includes a pharmaceutical product.

vintage year has the same meaning as in the *Clean Energy Act 2011*.

2B Carbon dioxide equivalence of an amount of an SGG

- (1) For the purposes of this Act, the carbon dioxide equivalence of an amount of an SGG that is a greenhouse gas is the amount of the

SGG multiplied by a value specified in the regulations in relation to that kind of SGG.

- (2) For the purposes of this Act, the carbon dioxide equivalence of an amount of an SGG that is not a greenhouse gas is zero.
- (3) For the purposes of this section, **greenhouse gas** has the same meaning as in the *National Greenhouse and Energy Reporting Act 2007*.

3 After section 3

Insert:

3A Import levy—SGGs

- (1) If:
 - (a) a controlled substances licence allows the licensee to import SGGs; and
 - (b) the licensee imports an SGG during a quarter during which the licence is in force;levy is imposed on the licensee in respect of that import.
- (2) Subsection (1) does not apply to the import of an SGG in circumstances that are prescribed for the purposes of paragraph 13(1A)(b) of the *Ozone Protection and Synthetic Greenhouse Gas Management Act 1989*.
- (3) Subsection (1) does not apply to the import of an SGG that is to be used for a purpose prescribed by the regulations.
- (4) Subsection (1) does not apply to the import of an SGG if:
 - (a) the SGG is imported for the purpose of the destruction of the SGG; and
 - (b) the conditions specified in the regulations are satisfied.
- (5) Subsection (1) does not apply to the import of an SGG contained in ODS equipment or SGG equipment.
- (6) For the purposes of this section, if a licence is in force for only part of a particular quarter, that part is taken to be a quarter.

- (7) The amount of levy imposed by subsection (1) on a licensee in respect of the import of an SGG in a quarter is the amount worked out using the following formula:

$$\left(\begin{array}{c} \text{Number of tonnes} \\ \text{of the carbon} \\ \text{dioxide equivalence} \\ \text{of the SGG} \end{array} \times \begin{array}{c} \text{Applicable} \\ \text{charge} \end{array} \right) + \left(\begin{array}{c} \text{Number of} \\ \text{tonnes} \\ \text{of the SGG} \end{array} \times \begin{array}{c} \text{Prescribed} \\ \text{rate} \end{array} \right)$$

where:

applicable charge means:

- (a) if the quarter is in a fixed charge year—the per unit charge applicable under subsection 100(1) of the *Clean Energy Act 2011* for the issue of a carbon unit with a vintage year of that fixed charge year; or
- (b) if the quarter is in a flexible charge year—the benchmark average auction charge for the previous financial year.

prescribed rate means the rate prescribed by the regulations.

- (8) The prescribed rate must not exceed \$165 per tonne.

(9) If:

- (a) levy is imposed by subsection (1) on a licensee in respect of an import of an SGG; and
 - (b) the Minister is satisfied that the SGG:
 - (i) is to be used in medical equipment; or
 - (ii) is to be used in the manufacture of medical equipment; or
 - (iii) is to be used in a product, or in equipment, prescribed for the purposes of paragraph 8D(1)(c) of the *Ozone Protection and Synthetic Greenhouse Gas Management Act 1989*; or
 - (iv) is to be used in the manufacture of a product, or of equipment, specified in an instrument in force under paragraph 8D(1)(d) of that Act; or
 - (v) is to be used for a purpose prescribed by the regulations;
- the Minister may, by written notice given to the licensee, determine that the licensee is exempt from the carbon charge component of the amount of the levy.

- (10) For the purposes of subsection (9), the *carbon charge component* of the amount of the levy is so much of that amount as is equal to the amount worked out using the following formula:

$$\begin{array}{c} \text{Number of tonnes} \\ \text{of the carbon} \\ \text{dioxide equivalence} \\ \text{of the SGG} \end{array} \times \begin{array}{c} \text{Applicable} \\ \text{charge} \end{array}$$

where:

applicable charge means the charge that is the applicable charge for the purposes of the application of subsection (7) to the levy.

- (11) In making a determination under subsection (9), the Minister must have regard to such matters as are specified in the regulations.
- (12) The Minister must not make a recommendation to the Governor-General about regulations to be made for the purposes of subsection (3) unless the Minister is satisfied that:
- (a) it would be impracticable to impose levy on the import of an SGG that is to be used for a purpose to be prescribed by those regulations; or
 - (b) a purpose to be prescribed by those regulations is a medical, veterinary, health or safety purpose.
- (13) The Minister must not make a recommendation to the Governor-General about regulations to be made for the purposes of subparagraph (9)(b)(v) unless the Minister is satisfied that:
- (a) it would be impracticable to require payment of the carbon charge component of the amount of levy imposed on the import of an SGG that is to be used for a purpose to be prescribed by those regulations; or
 - (b) a purpose to be prescribed by those regulations is a medical, veterinary, health or safety purpose.

3A Section 4 (heading)

Repeal the heading, substitute:

4 Import levy—substances other than SGGs

4 Paragraph 4(1)(a)

After “or substances”, insert “(other than an SGG)”.

5 Subsection 4(2)

Repeal the subsection, substitute:

- (2) Subsection (1) does not apply to the import of a substance contained in ODS equipment or SGG equipment.

6 Subsection 4(3)

Repeal the subsection.

7 Paragraph 4(5)(b)

Repeal the paragraph.

8 After section 4

Insert:

4A Import levy—SGG equipment

- (1) If:
 - (a) an ODS/SGG equipment licence allows the licensee to import SGG equipment; and
 - (b) the licensee imports SGG equipment during a quarter during which the licence is in force;levy is imposed on the licensee in respect of that import.
- (2) Subsection (1) does not apply to the import of:
 - (a) SGG equipment prescribed by the regulations; or
 - (b) SGG equipment specified in a legislative instrument made by the Minister.
- (3) Subsection (1) does not apply to the import of SGG equipment if the import is covered by paragraph 13(6A)(b) of the *Ozone Protection and Synthetic Greenhouse Gas Management Act 1989*.
- (4) For the purposes of this section, if a licence is in force for only part of a particular quarter, that part is taken to be a quarter.
- (5) The amount of levy imposed by subsection (1) on a licensee in respect of the import of SGG equipment during a quarter is the amount worked out using the following formula:

$$\left(\begin{array}{l} \text{Number of tonnes} \\ \text{of the carbon} \\ \text{dioxide equivalence} \\ \text{of the SGG} \\ \text{contained in the} \\ \text{equipment} \end{array} \times \begin{array}{l} \text{Applicable} \\ \text{charge} \end{array} \right) + \left(\begin{array}{l} \text{Number of} \\ \text{tonnes} \\ \text{of the SGG} \\ \text{contained in the} \\ \text{equipment} \end{array} \times \begin{array}{l} \text{Prescribed} \\ \text{rate} \end{array} \right)$$

where:

applicable charge means:

- (a) if the quarter is in a fixed charge year—the per unit charge applicable under subsection 100(1) of the *Clean Energy Act 2011* for the issue of a carbon unit with a vintage year of that fixed charge year; or
- (b) if the quarter is in a flexible charge year—the benchmark average auction charge for the previous financial year.

prescribed rate means the rate prescribed by the regulations.

- (6) The prescribed rate must not exceed \$165 per tonne.
- (7) For the purposes of subsection (5), disregard an SGG that is used, or for use, for a purpose prescribed by the regulations.
- (8) Unless sooner revoked, a legislative instrument made under paragraph (2)(b) ceases to be in force 12 months after it is registered under the *Legislative Instruments Act 2003*.
- (9) The Minister must not make a recommendation to the Governor-General about regulations to be made for the purposes of subsection (7) unless the Minister is satisfied that:
 - (a) it would be impracticable to work out an amount of levy by reference to an SGG that is used, or for use, for a purpose to be prescribed by the regulations; or
 - (b) a purpose to be prescribed by those regulations is a medical, veterinary, health or safety purpose.

4B Import levy—ODS equipment

- (1) If:
 - (a) an ODS/SGG equipment licence allows the licensee to import ODS equipment; and

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- (b) the licensee imports ODS equipment during a quarter during which the licence is in force;
levy is imposed on the licensee in respect of that import at the rate prescribed by the regulations.
- (2) Subsection (1) does not apply to the import of ODS equipment if the import is covered by paragraph 13(6A)(b) of the *Ozone Protection and Synthetic Greenhouse Gas Management Act 1989*.
- (3) For the purposes of this section, if a licence is in force for only part of a particular quarter, that part is taken to be a quarter.
- (4) The rate of levy prescribed by the regulations must not exceed \$3,000 per ODP tonne.
- Note: For the purposes of subsection (4), the method of calculating ODP tonnes is set out in section 10 of the *Ozone Protection and Synthetic Greenhouse Gas Management Act 1989*.
- (5) Section 9 of the *Ozone Protection and Synthetic Greenhouse Gas Management Act 1989* does not apply for the purposes of this section.

9 Section 5

Omit “4”, substitute “3A, 4, 4A or 4B”.

10 Application of amendments

- (1) Section 3A of the *Ozone Protection and Synthetic Greenhouse Gas (Import Levy) Act 1995* as amended by this Act applies in relation to the import of an SGG during:
- (a) the quarter beginning on 1 July 2012; or
- (b) a later quarter.
- (2) The amendments of section 4 of the *Ozone Protection and Synthetic Greenhouse Gas (Import Levy) Act 1995* made by this Act apply in relation to the import of a substance during:
- (a) the quarter beginning on 1 July 2012; or
- (b) a later quarter.
- (3) Section 4A of the *Ozone Protection and Synthetic Greenhouse Gas (Import Levy) Act 1995* as amended by this Act applies in relation to the import of SGG equipment during:
- (a) the quarter beginning on 1 July 2012; or

Schedule 1 Amendments

- (b) a later quarter.
- (4) Section 4B of the *Ozone Protection and Synthetic Greenhouse Gas (Import Levy) Act 1995* as amended by this Act applies in relation to the import of ODS equipment during:
- (a) the quarter beginning on 1 July 2012; or
 - (b) a later quarter.
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*[Minister's second reading speech made in—
House of Representatives on 13 September 2011
Senate on 12 October 2011]*

(184/11)

10 *Ozone Protection and Synthetic Greenhouse Gas (Import Levy) Amendment Act 2011*
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