

EXPLANATORY STATEMENT

Issued by authority of the Minister for the Environment and Energy

Ozone Protection and Synthetic Greenhouse Gas Management (Non-grandfathered Quota – 2018-19) Determination 2017

The *Ozone Protection and Synthetic Greenhouse Gas Management Act 1989* (OPSGGM Act) implements Australia's international obligations under the Vienna Convention for the Protection of the Ozone Layer and its Montreal Protocol on Substances that Deplete the Ozone Layer and the United Nations Framework Convention on Climate Change and its Kyoto Protocol. It does so through the control of the import, export, manufacture and use of substances covered by the OPSGGM Act. The import and manufacture of certain products containing, or designed to contain, some of these controlled substances is also prohibited under the OPSGGM Act unless the correct licence or exemption is held.

Hydrofluorocarbons (HFCs) are a type of synthetic greenhouse gas, mostly used in refrigeration and air conditioning equipment. HFCs generally have a high global warming potential, meaning they have a greater ability to trap heat in the atmosphere compared to a similar mass of carbon dioxide.

Part IVA of the OPSGGM Act and Part 4A of the *Ozone Protection and Synthetic Greenhouse Gas Management Regulations 1995* (OPSGGM Regulations) provide for the phase-down of HFCs through a reducing import quota system over 18 years. From 1 January 2018, a person must have been allocated a HFC quota to be able to import bulk HFCs into Australia.

HFC quota is divided between a 'grandfathered' percentage and a 'non-grandfathered' percentage. The grandfathered percentage can only be allocated to established market participants. The non-grandfathered percentage is not subject to the same limitation; both new and established market participants are able to apply for non-grandfathered quota.

Subregulation 51(4) of the OPSGGM Regulations provides that the Minister may, by legislative instrument, determine requirements for a person to be entitled to an amount of non-grandfathered quota, and the amount, or method for working out the amount, of non-grandfathered quota to which a person is entitled for each of the years in an HFC quota allocation period.

The *Ozone Protection and Synthetic Greenhouse Gas Management (Non-grandfathered Quota – 2018-19) Determination 2017* (the Determination):

- (a) sets out requirements for a person to be entitled to an amount of non-grandfathered quota; and
- (b) specifies the methods for working out the amount of non-grandfathered quota to which a person is entitled for each of the years in the first HFC quota allocation period (2018 and 2019).

The public and industry stakeholders (including HFC importers, equipment manufacturers, end users, state and territory governments, and non-government organisations) were consulted on proposed methods for allocating non-grandfathered quota in the first HFC quota period between 27 July and 9 August 2017. Consultation was undertaken by publishing the proposed methods for allocating non-grandfathered quota on the Department of Environment and

Energy's website and inviting comments. Stakeholders were also contacted directly and invited to comment. The majority of submissions favoured equal distribution of quota, but noted the need for all allocations to be of a commercially viable size. The method set out in the Determination balances these potentially competing preferences.

Details of the Determination are set out in the Attachment.

Paragraph 51(5)(a) of the OPSGGM Regulations provides that in making a determination under subregulation 51(4), the Minister must have regard to Australia's international obligations and the policies of the Commonwealth Government in relation to the manufacture, importation, or consumption of scheduled substances. The Minister had regard to these matters in making the Determination. There are no international obligations relevant to the Determination. The proposed method meets Commonwealth Government competition requirements. There are no other obligations relevant to the Determination.

The OPSGGM Regulations specify no further conditions that need to be satisfied before the power to make the Determination may be exercised.

The Determination is a legislative instrument for the purposes of the *Legislation Act 2003*.

The Determination commenced the day after it was registered.

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 (Non-grandfathered
Quota – 2018-19) Determination 2017

This Determination 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 *Ozone Protection and Synthetic Greenhouse Gas Management Act 1989* and the *Ozone Protection and Synthetic Greenhouse Gas Management Regulations 1995* (OPSGGM Regulations) implement the Australian Government's commitment to phase-down the import of HFCs from 1 January 2018. From 1 January 2018, a person must have been allocated a HFC quota to be able to import bulk HFCs into Australia.

The *Ozone Protection and Synthetic Greenhouse Gas Management (Non-grandfathered Quota – 2018-19) Determination 2017* (the Determination) prescribes requirements for a person to be entitled to an amount of non-grandfathered HFC quota, and methods for working out the amount of non-grandfathered quota to which a person is entitled for each of the years in the first HFC quota allocation period (2018 and 2019).

Human rights implications

The Determination does not engage with any of the applicable rights or freedoms.

Conclusion

The Determination is compatible with human rights as it does not raise any human rights issues.

**Details of the Ozone Protection and Synthetic Greenhouse Gas Management
(Non-grandfathered Quota 2018-19) Determination 2017**

Section 1 – Name

1. This section provides that the title of the instrument is the *Ozone Protection and Synthetic Greenhouse Gas Management (Non-grandfathered Quota – 2018-19) Determination 2017* (the Determination).

Section 2 – Commencement

2. This section provides that the Determination commences on the day after it is registered.

Section 3 – Authority

3. This section provides that the Determination is made under subregulation 51(4) of the *Ozone Protection and Synthetic Greenhouse Gas Management Regulations 1995* (the OPSGGM Regulations).

Section 4 – Simplified outline of this instrument

4. This section provides a simplified outline of the Determination.

Section 5 – Definitions

5. This section defines terms used in the Determination, including by reference to the definitions of those terms in the *Ozone Protection and Synthetic Greenhouse Gas Management Act 1989* (the OPSGGM Act) and the OPSGGM Regulations.

Section 6 – Entitlement

6. Paragraph 51(4)(a) of the OPSGGM Regulations provides that the Minister may determine the requirements for a person to be entitled to an amount of non-grandfathered quota for each of the calendar years in an HFC quota allocation period.
7. Section 6 prescribes requirements for the purposes of paragraph 51(4)(a) of the OPSGGM Regulations in respect of the calendar years in the first HFC quota allocation period (2018 and 2019). That is, under section 6, a person must be entitled to an amount of non-grandfathered quota for each of the years in the HFC quota allocation period that either: no ballot is required under subsection 8(1) of the Determination; or a ballot is required and the person is selected in the ballot in accordance with subsection 8(2).

Section 7 – Amount

8. Paragraph 51(4)(b) of the OPSGGM Regulations provides that the Minister may determine the amount, or method for working out the amount, of non-grandfathered quota to which a person is entitled for each of the calendar years in an HFC quota allocation period.
9. Section 7 prescribes, for the purposes of paragraph 51(4)(b) of the OPSGGM Regulations, two different methods for determining the amount of non-grandfathered quota to which a person is entitled. The method used to allocate the non-grandfathered

quota will ultimately depend on whether the number of eligible applicants is greater than 100 (see section 8). An *eligible applicant* is defined in section 5 to mean a person who is entitled to non-grandfathered quota for the years in the first HFC quota allocation period (disregarding the requirement prescribed by section 6). The note to the definition of *eligible applicant* in section 5 also directs readers to subsection 51(1) of the OPSGGM Regulations which specifies all the matters that a person must satisfy to be entitled to non-grandfathered quota.

10. If a ballot is not required as the number of eligible applicants is 100 or less, paragraph 7(a) provides that a person will receive an amount of quota that is worked out by dividing the total non-grandfathered HFC industry limit by number of eligible applicants. This will ensure that all eligible applicants receive an equal share of the non-grandfathered HFC industry limit. The *non-grandfathered HFC industry limit* is defined in section 5 as meaning 0.8 CO_{2e} megatonnes.
11. If a ballot is required because the number of eligible applicants is greater than 100 (see section 8), paragraph 7(b) provides that the amount of non-grandfathered quota to which an eligible applicant is entitled is 8,000 CO_{2e} tonnes each for each of the two years in the HFC quota allocation period. 8,000 CO_{2e} tonnes has been determined to be the minimum viable HFC quota allocation size based on a minimum commercially viable quantity of HFC R134a (which is the most commonly imported HFC).

Section 8 – Ballots

12. Subsection 8(1) provides that a ballot will be required if the number of eligible applicants is greater than 100. This figure is based on dividing the *non-grandfathered HFC industry limit* (defined in section 5 as 0.8 CO_{2e} megatonnes, which is equivalent to 800,000 CO_{2e} tonnes) by 8,000 CO_{2e} tonnes (being the amount of non-grandfathered quota allocated to an eligible person if a ballot is required under paragraph 7(b)). The result of this calculation is 100, meaning that the maximum number of allocations of 8,000 CO_{2e} tonnes is 100.
13. Subsections 8(2) and (3) specify how the ballot must be conducted in order to ensure fairness and transparency.
14. If a person applies for an SGG licence at the same time as their application for HFC quota, subregulation 44(4) of the OPSGGM Regulations requires the Minister to decide whether or not to grant the SGG licence before deciding whether to allocate any HFC quota for the years in the HFC quota allocation period. Subsection 8(4) requires that the ballot not be conducted before the earliest time that, in accordance with subregulation 44(4) of the OPSGGM Regulations, the Minister may allocate HFC quotas for the calendar years in the first HFC quota allocation period. The effect of subsection 8(4) is to require the Minister to determine any licence applications before allocating non-grandfathered quota through a ballot.

Section 9 – Delegation by Secretary

15. Subsection 9(1) allows the Secretary to delegate any or all of his or her functions and powers under the Determination to an SES, or acting SES employee, in the Department or to an APS employee who holds, or is acting in, an Executive Level 2, or equivalent, position in the Department. Subsection 9(2) provides that, in performing a delegated function or exercising a delegated power, a delegate must comply with any written directions from the Secretary.

16. It is intended that these functions and powers would only be delegated to Executive Level 2 employees in the Department who have day-to-day responsibility for the administration of the OPSGGM Act and the OPSGGM Regulations. This will ensure that those persons exercising the function and powers under the Determination has the necessary expertise to do so. It is not necessary to expressly provide for this in the Determination as the instrument of delegation will provide for this.
17. The capacity to delegate to Executive Level 2 officers who have day-to-day responsibilities in relation to the OPSGGM Act and the Principal Regulations is essential to streamline the administration of the OPSSGM legislation.
18. The giving of delegations and the exercise of delegated powers are the subject of fraud control procedures, risk management processes, and other protocols. These are designed to ensure delegated decision-making is made at the appropriate level and in a transparent and accountable manner.