

EXPLANATORY STATEMENT

Select Legislative Instrument No. _____ of 2017

Issued by authority of the Minister for the Environment and Energy

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

*Ozone Protection and Synthetic Greenhouse Gas Management Legislation
Amendment (2017 Measures No 2) Regulations 2017*

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

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

The Review of the Ozone Protection and Synthetic Greenhouse Gas Program (the Review), completed in 2016, identified a range of measures to improve the effectiveness and efficiency of the Ozone Protection and Synthetic Greenhouse Gas Program (the Program) and further reduce emissions of ozone depleting substances and synthetic greenhouse gases. It also identified opportunities to improve and streamline the operation of the Program, including reducing regulatory compliance costs. The Australian Government agreed to all 60 of the recommended measures on 5 May 2016.

The purpose of the *Ozone Protection and Synthetic Greenhouse Gas Management Legislation Amendment (2017 Measures No. 2) Regulations 2017* (the Regulations) is to:

- (a) Implement two recommendations of the Review to improve the efficiency and effectiveness of end-use licensing by:
- (i) Allowing current permit holders to apply for the renewal of refrigeration and air conditioning industry permits and fire protection industry permits. This will streamline application processes for applicants, meaning they no longer have to re-submit information already submitted with previous applications.
 - (ii) Removing requirements for unique permit numbers to be issued for all refrigeration and air conditioning industry permits. This will allow applicants to retain the same permit number when renewing their industry permit. Removing this requirement also removes inconsistencies across the end use permit schemes as there is currently no requirement that unique permit numbers be assigned to fire protection industry permits.
 - (iii) Extending the maximum duration of all refrigeration and air conditioning industry permits and fire protection industry permits to 36 months. The maximum duration for these permits is currently either 12 or 24 months, depending on the permit type. Extending their maximum duration will reduce the burden on business associated with re-applying for permits, as they would have to do so less frequently.

- (b) Insert a reference to the Exemption List for Non-Quarantine and Pre-Shipment (Non-QPS) Applications of Methyl Bromide for 2018. The Non-QPS exemption list specifies the individual holders of critical use exemptions, their nominated suppliers (from whom they may purchase their non-quarantine and pre-shipment stocks of methyl bromide in the exemption year) and the maximum quantity of methyl bromide that they may purchase from that supplier for that year. This amendment allows the supply and use of methyl bromide approved by the Montreal Protocol for non-quarantine and pre-shipment category by critical use exemption holders during 2018. In 2018, critical use exemptions in Australia will be restricted to the strawberry runner industry in the Toolangi district of Victoria.
- (c) Insert a reference to the Intermediate Supplier List for Non-QPS Applications of Methyl Bromide for 2018. The Non-QPS intermediate supplier list, for a particular year, identifies which suppliers of methyl bromide can sell methyl bromide to other nominated suppliers for supply to holders of a critical use exemption and also identifies the maximum quantity of methyl bromide that may be supplied by a nominated supplier for that year.

The Review involved analysis by the Department and independent experts, extensive public consultation, as well as targeted consultation with relevant business stakeholders. The Program was found to be successful in implementing the objectives of the Act overall, having phased out 99 per cent of ozone depleting substances and contributed to a reduction in Australian greenhouse gas emissions of approximately 40 million tonnes of CO_{2-e} since its inception. The recommendations of the Review reflected this solid foundation for further emission reduction policies and streamlining opportunities.

The changes are supported by stakeholders and will come into effect on 1 January 2018. In his announcement of the outcomes of the Review, then Minister Hunt nominated this date for the implementation of the measures announced by the Government.

Key industry stakeholders (including refrigeration and air conditioning, fire protection technician representative bodies, business and contractor peak bodies, state and territory governments, and non-government organisations) were consulted throughout the Review through public consultation meetings, invitations for public comment and participation in a technical working group made up of industry representatives.

Consultation was also undertaken through targeted meetings with Refrigerants Australia, the Air Conditioning and Refrigeration Equipment Manufacturers Association of Australia, and the administrators of the current permit schemes: the Refrigeration and Air Conditioning (RAC) Industry Board and the Fire Protection Industry Board.

All stakeholders who commented on the measures were generally supportive, however some Directors of the Refrigeration and Air Conditioning industry board raised concerns regarding the extension of the maximum duration of all refrigeration and air conditioning industry permits to 36 months. Their concern was that the extension of permit durations may be accompanied by a disproportionate increase in permit application fees. They were assured that permit application fees will continue to be set in accordance with the Australian Government's Cost Recovery Guidelines and that the annual cost would not change. Following this assurance, they were supportive of the measures.

In the case of the extension to permit duration, there will be a transition period of 12 months, within which applicants will be able to choose to seek a permit for either the original permit period or for the new, extended period. Stakeholders will be informed of the upcoming changes through a broad communications campaign including website updates, industry newsletter articles and information provided in targeted letters for people eligible to renew their permits. This communications campaign will commence in October 2017 when the Regulations come

into force to provide forewarning, and will continue until all relevant stakeholders are aware of the new conditions.

The amendments relating to the supply and use of non-QPS methyl bromide in 2018 will directly affect strawberry runner growers in the Toolangi district of Victoria. The Toolangi Certified Strawberry Runner Growers' Co Op Limited was the subject of targeted consultation on the proposed amendments and was supportive of them.

Details of the Regulations are set out in the Attachment.

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

The Regulations are a legislative instrument for the purposes of the *Legislation Act 2003*.

Sections 1- 4 commence the day after the Regulations are registered on the Federal Register of Legislation. Schedule 1 commences on 1 January 2018.

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 Legislation Amendment (2017 Measures No. 2) Regulations 2017

The Regulations 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 Legislative Instrument

A review of the Ozone Protection and Synthetic Greenhouse Gas Program, completed in 2016, identified a range of measures to improve the effectiveness and efficiency of the Program and further reduce emissions of ozone depleting substances and synthetic greenhouse gases. The Australian Government agreed to all recommended measures in June 2016.

The purpose of the *Ozone Protection and Synthetic Greenhouse Gas Management Legislation Amendment (2017 Measures No. 2) Regulations 2017* (the Regulations) is to give effect to a number of recommendations of the Review. The amendments will reduce the administrative burden on industry associated with complying with the *Ozone Protection and Synthetic Greenhouse Gas Management Regulations 1995*, whilst ensuring there is no negative impact on the effectiveness of the regulatory scheme. The measures include:

- i. Allowing permit holders to apply for the renewal of refrigeration and air conditioning industry permits and fire protection industry permits.
- ii. Removing requirements for permit numbers to be issued for all refrigeration and air conditioning industry permits to allow applicants to retain the same permit number when renewing their refrigeration and air conditioning industry permits.
- iii. Extending the maximum duration of all refrigeration and air conditioning industry permits and fire protection industry permits to 36 months.

The Regulations also allow the supply and use of methyl bromide for non-quarantine and pre-shipment (non-QPS) uses by critical use exemption holders during 2018. The amendments include the exemption list for non-QPS applications of methyl bromide for 2018 and the intermediate supplier list for non-QPS applications of methyl bromide for 2018 in the definitions of the terms *Non-QPS Exemption List* and *Non-QPS Intermediate Supplier Exemption List* in the Principal Regulations.

Human rights implications

The Regulations do not engage with any of the applicable rights or freedoms.

Conclusion

The Regulations are compatible with human rights as they do not raise any human rights issues.

The Hon Josh Frydenberg MP, Minister for the Environment and Energy

Details of the *Ozone Protection and Synthetic Greenhouse Gas Management Legislation Amendment (2017 Measures No. 2) Regulations 2017*

Section 1 – Name

1. This section provides that the title of the Regulations is the *Ozone Protection and Synthetic Greenhouse Gas Management Legislation Amendment (2017 Measures No. 2) Regulations 2017* (the Regulations).

Section 2 – Commencement

2. The table in this section provides for the commencement of the Regulations.
3. Sections 1 to 4 (and anything else in the Regulations not covered by the table) commences on the day after the instrument is registered.
4. Schedule 1 commences on 1 January 2018.

Section 3 – Authority

5. This section provides that the Regulations are made under the *Ozone Protection and Synthetic Greenhouse Gas Management Act 1989* (the OPSGGM Act).

Section 4 – Schedules

6. This section provides that each instrument specified in a Schedule to the Regulations is amended or repealed as set out in the applicable terms in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

Schedule 1 – Amendments

Renewal of permits

Item 1, Item 2, Item 11, and Item 12

7. Items 2 and 12 allow the holders of refrigeration and air conditioning industry permits and fire protection industry permits to apply for the renewal of their existing permit, rather than having to apply for a new one. Refrigeration and air conditioning industry permits are defined in regulation 110 of the *Ozone Protection and Synthetic Greenhouse Gas Management Regulations 1995* (the Principal Regulations) as a refrigerant handling licence, a refrigerant trading authorisation, a RAC equipment manufacturing authorisation, a halon special permit, or a restricted refrigerant trading authorisation. Fire protection industry permits are defined in regulation 300 of the Principal Regulations as an extinguishing agent handling licence, an extinguishing agent trading authorisation, or a halon special permit.
8. Under Items 2 and 12, a permit holder will be able to apply for a renewal of their existing permit if the application was made no later than 30 days before the current permit was due to cease to be in force. In order to ensure the continuing accuracy of information, when applying for the renewal, the permit holder will be required to confirm that information and evidence submitted for their previous permit application is still current. If this is not the case, the applicant will be required to provide evidence of the change.

9. The amendments allowing renewal of permits are of benefit to permit holders, as they will no longer be required to re-submit information and evidence that had already been submitted as part of a previous application. Items 2 and 12 insert regulations 121(1C) and 313(1C), respectively, which allow the relevant authority to take into account information previously submitted by the applicant when deciding whether or not to grant a permit. This is in addition to any other matters that could be taken into account in deciding whether to grant a permit.
10. The fees for renewals of refrigeration and air conditioning industry permits and fire protection industry permits will be set at the same amounts as the application fees for (new) applications for refrigeration and air conditioning industry permits and fire protection industry permits respectively. This is because, whilst it would be administratively simpler for an applicant to apply for a renewal than to apply for a new permit, the information required to be considered by the decision-maker in considering the application would not be reduced. No less work is involved in processing a renewal application as is associated with processing a new permit application.
11. Items 1 and 11 are required as a consequence of Items 2 and 12.

Removing unique permit number requirements

Item 4, Item 6 and Item 8

12. Items 4, 6 and 8 repeal provisions requiring unique permit numbers to be allocated to different types of refrigeration and air conditioning industry permits. The repeal of these provisions will allow permit holders to retain the same permit number when they are granted a renewal of an existing permit.
13. These amendments have been made at the request of industry. Currently, it is a condition of a refrigeration and air conditioning licences granted under Subdivision 6A.2.2 of the Principal Regulations and a condition of refrigerant authorisations granted under Subdivision 6A.2.3 of the Principal Regulations that permit numbers be displayed on any invoices, receipts, and quotes for work provided by holders of these permits (see paragraphs 135(1)(e) and 141(1)(l)). This imposed a burden on these businesses as new materials must be printed each time the permit holder is issued a new permit number. Retaining the same permit number following renewal of a permit would therefore result in significant cost savings and reductions in administrative burden for holders of these types of industry permits.

Extending maximum permit duration

Item 3, Item 4, Item 5, Item 8, Item 13, Item 14, Item 16 and Item 17

14. Item 3 and Item 13 insert regulations 122A and 314A into the Principal Regulations, respectively. These items increase the maximum duration for refrigeration and air conditioning industry permits and fire protection industry permits to 36 months. The current maximum duration for all of these permit types is 24 months, except for halon special permits and refrigeration and air conditioning trainee licences, which have a maximum duration of 12 months.
15. Item 4, Item 5, Item 8, Item 13, Item 14, Item 16 and Item 17 are required as a consequence of Items 3 and 13 and remove redundant references to the maximum duration of refrigeration and air conditioning industry permits and fire protection industry permits as either 12 or 24 months, depending on the type of permit in question.

Application provisions

Item 19

16. Item 19 inserts a new Division 3 into Part 10 of the Principal Regulations which sets out application provisions relating to the maximum duration of refrigeration and air conditioning industry permits and fire protection industry permits.
17. Regulations 959 and 960 clarify that despite the repeal of subregulations 130(3), 140(4), 150(4), 321(3), 331(5) and 341(4), the maximum duration specified in those subregulations will continue to apply to refrigeration and air conditioning industry permits and fire protection industry permits granted before 1 January 2018.

Non-QPS Exemption List

Item 9

18. Regulation 200 of the Principal Regulations defines the term *Non-QPS Exemption List* by reference to a list that has been published by the Department of the Environment and Energy each year since 2005. The list sets out the details of all individuals and corporations who are granted the status of *exempt persons* for the non-quarantine and pre-shipment (non-QPS) use of methyl bromide after approval of the use by the Montreal Protocol.
19. Methyl bromide is a controlled substance listed in Part VII of Schedule 1 to the OPSGGM Act. Methyl bromide contributes to the depletion of the ozone layer when released into the atmosphere, and most uses are emissive by nature. The Principal Regulations regulate the supply and end use of non-QPS methyl bromide through record keeping and reporting systems.
20. Australia's obligations under the Montreal Protocol require that methyl bromide is only used for authorised purposes. Under the Montreal Protocol, non-QPS uses of methyl bromide were phased out from 1 January 2005, except where critical use exemptions are granted by Parties to the Montreal Protocol or where an emergency use is allowed by the Minister and subsequently reported to the Montreal Protocol.
21. This Item amends the definition of *Non-QPS Exemption List* under regulation 200 to include the *Exemption List for Non-QPS Applications of Methyl Bromide in 2018*. This Item allows the supply and use of methyl bromide for non-QPS category uses by critical use exemption holders during 2018.

Non-QPS Intermediate Supplier List

Item 10

22. Regulation 213 defines the term *Non-QPS Intermediate Supplier List* by reference to a list that has been published by the Department of the Environment and Energy each year since 2005. The list sets out the details of all individuals and corporations who are granted the status of intermediate supplier for the non-QPS use of methyl bromide.
23. This Item amends the definition of Non-QPS Intermediate Supplier List under subregulation 213(6) of the Principal Regulations to include the Intermediate Supplier List for Non-QPS Applications of Methyl Bromide in 2018. This Item allows the supply and use of methyl bromide for non-QPS category uses by critical use exemption holders during 2018.

Other matters

Item 7, Item 15, and Item 18

24. Item 7 repeals the note to subregulation 141(1). The note refers to the term “quarter” being defined in the Act. This term is no longer defined in the Act, and a definition of the term will be inserted into the Principal Regulations by the *Ozone Protection and Synthetic Greenhouse Gas Management Legislation Amendment (2017 Measures No. 1) Regulations 2017*, commencing 1 January 2018.
25. Item 15 amends subregulation 321(4) to clarify that the Board referred to in that subregulation is the Fire Protection Industry (ODS & SGG) Board.
26. Item 18 updates an incorrect reference in paragraph 344(a) of the Principal Regulations that currently refers to regulation 321 when it should refer to Subdivision 6A.4.3.