

EXPLANATORY STATEMENT

Select Legislative Instrument No. _____ of 2018

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 Amendment
(Application Fees) Regulations 2018*

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 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.

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.

Subsection 45A(1) of the OPSGGM Act provides, in part, that regulations may be made that:

- regulate the sale, purchase, acquisition and disposal of scheduled substances;
- regulate the storage, use or handling of scheduled substances; and
- matters incidental to these matters.

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), which is administered under the OPSGGM Act. The Review also identified opportunities to further reduce emissions of ozone depleting substances and synthetic greenhouse gases and improve and streamline the operation of the Program, including reducing regulatory compliance costs and burden on business. The Australian Government agreed to all 60 of the recommendations and measures on 5 May 2016.

The *Ozone Protection and Synthetic Greenhouse Gas Management Regulations 1995* (the Principal Regulations) require persons taking certain actions with respect to substances listed under Schedule 1 of the OPSGGM Act, or with respect to refrigeration and air conditioning or fire protection equipment containing these substances, to hold a permit. The Principal Regulations specify fees to accompany applications for these permits. These fees were set in 2013 at amounts that reflected the costs of administering the permits. Fees have increased annually, in line with the Wage Price Index (WPI).

The purpose of the *Ozone Protection and Synthetic Greenhouse Gas Management Amendment (Application Fees) Regulations 2018* (the Regulations) is to apply permit application fees pertaining to permits of 12, 24 or 36 months in duration. Specifically, this amendment allows application fees to be applied for permits having a maximum duration of 36 months. Permits with a duration of 36 months came into effect on 1 January 2018.

This is a consequential amendment to amendments that gave effect to a recommendation of the Review to extend permit durations. Amendments to the Principal Regulations extending permit durations commenced on 1 January 2018. The Regulations enable a fee to be charged for a

permit of 36 months duration in line with the cost of administering the permit. The fees apply prospectively from the date on which these Regulations come into effect.

The fees reflect the current costs associated with administering the permit scheme and are consistent with the *Ozone Protection and Synthetic Greenhouse Gas Management Program – Cost Recovery Implementation Statement 2016-17*. Under the full cost recovery model, application fees paid by permit holders represent the cost of administering a permit for its full duration. Administration includes the cost of receiving and assessing applications, liaising with applicants, granting permits, conducting communication activities to assist the regulated community to understand their obligations under the permit schemes and for monitoring and compliance activities.

The Principal Regulations provide for an annual fee increase consistent with the WPI to occur on 1 January each year. This ensures the fees continue to reflect the majority of expenses that make up the cost of assessing and processing the licences which are labour and on-costs. The annual fee increase consistent with the WPI are retained by the Regulations and applied to application fees for permits of all durations.

Between 2014-2016 extensive targeted consultation on increasing permit durations and associated application fees was undertaken through meetings with representative industry groups including 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 this measure were generally supportive, however some Directors of the Refrigeration and Air Conditioning Industry Board raised concerns regarding potential changes to the application fees. Their concern was that the extension of permit durations may be accompanied by a disproportionate increase in permit application fees. Stakeholders were assured that permit application fees will continue to be set in accordance with the Australian Government's Cost Recovery Guidelines and that the corresponding application fees for the extended permit durations of 36 months would be set on a pro rata basis based on the existing fees (that is, the 12 month fee will be multiplied by three to calculate the fee for a 36 month permit). Following this assurance, they were supportive of the measures.

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*.

The Regulations commence the day after it is registered on the Federal Register of Legislation.

Authority: Section 70 of the *Ozone Protection and Synthetic Greenhouse Gas Management Act 1989*

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 (Application Fees) Regulations 2018

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 60 of the recommended measures on 5 May 2016.

The purpose of the *Ozone Protection and Synthetic Greenhouse Gas Management Amendment (Application Fees) Regulations 2018* (the Regulations) is a consequential amendment that gives effect to a recommendation of the Review to extend licence and permit durations. The measure will clarify and update the application fees pertaining to 12, 24 and 36 month licences and permits granted by the refrigeration and air conditioning and fire protection industry boards.

The updated fees reflect the current costs associated with administering the licensing scheme by the relevant industry boards, and are consistent with the *Ozone Protection and Synthetic Greenhouse Gas Management Program – Cost Recovery Implementation Statement 2016-17*.

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 Amendment (Application Fees) Regulations 2018*

Section 1 – Name

1. This section provides that the title of the Regulations is the *Ozone Protection and Synthetic Greenhouse Gas Management Amendment (Application Fees) Regulations 2018* (the Regulations).

Section 2 – Commencement

2. The table in this section provides for the commencement of the Regulations.
3. The whole of the Regulations commence on the day after the instrument is registered.

Section 3 – Authority

4. 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

5. 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

Item 1

6. Item 1 repeals regulations 343 and 344 and substitutes new provisions which specify application fees for refrigeration and air-conditioning (RAC) and fire protection (FP) permits.

Regulation 343 – RAC industry permit application fees

7. For the purposes of paragraph 121(1)(c) of the Principal Regulations, the table under subsection 343(1) specifies the types of licences and permits available under the RAC industry scheme and the relevant application fee depending on the permit duration.
8. Permit durations are available for: 12 months or less (one year permit), between 12 and 24 months (two year permit), and for between 24 and 36 months (three year permit). Maximum permit durations were increased from 24 to 36 months in the Principal Regulations by amendments made under the *Ozone Protection and Synthetic Greenhouse Gas Management Legislation Amendment (2017 Measures No.2) Regulations 2017*.
9. The fee specified in paragraph (a) of each item of the table is the application fee for a one year permit in 2018. It is intended that the one year permit fee also represents a “base application fee” which can be used to calculate fees for applications for other permits (of the same permit type) of longer durations. To calculate fees for permit of a longer duration in 2018, the base fee under paragraph (a) would be multiplied by two to calculate the fee for a permit with a two year duration, or similarly multiplied by three to determine the fee for a permit with a three year duration.

10. Subregulation 343(2) provides that, if an amount of a fee specified in paragraph (a) of an item in the table in subregulation (1) is increased under regulation 346, the increased fee is to be used in working out the amount of the fee payable for two and three year permits, under paragraphs (b) and (c) respectively, of that item. This increased amount under paragraph (a) would then become the new base amount for that year used to calculate the fees payable for two and three year permits.

For example, the application fee for a for a two year permit in 2019, would be calculated by increasing the one year permit fee specified in (a) of the relevant item of the table by the Wage Price Index (WPI) formula under regulation 346, and then multiply the result by two. Note that the resulting fee amount for a two year permit would not then also be subject to regulation 346 (only the fees for a one year permit, listed under each item in paragraph (a), would be subject to regulation 346).

Regulation 344 – FP industry permit application fees

11. For the purposes of paragraph 313(1)(b) of the Principal Regulations, the table under subsection 344(1) specifies the types of permits available under the FP industry scheme and the relevant application fee depending on the permit duration.
12. Permit durations are available for: 12 months or less (one year permit), between 12 and 24 months (two year permit), and for between 24 and 36 months (three year permit). Maximum permit durations were increased from 24 to 36 months in the Principal Regulations by amendments made under the *Ozone Protection and Synthetic Greenhouse Gas Management Legislation Amendment (2017 Measures No.2) Regulations 2017*.
13. The fee specified in paragraph (a) of each item of the table is the application fee for a one year permit in 2018. It is intended that the one year permit fee also represents a “base application fee” which can be used to calculate fees for applications for other permits (of the same permit type) of longer durations. To calculate fees for a permit of a longer duration in 2018, the base fee under paragraph (a) would be multiplied by two to calculate the fee for a permit with a two year duration, or similarly multiplied by three to determine the fee for a permit with a three year duration.
14. Subregulation 344(2) provides that, if an amount of a fee specified in paragraph (a) of an item in the table in subregulation (1) is increased under regulation 346, the increased fee is to be used in working out the amount of the fee payable for two and three year permits, under paragraphs (b) and (c) respectively, of that item. This increased amount under paragraph (a) would then become the new base amount for that year used to calculate the fees payable for two and three year permits.

For example, the application fee for a three year permit in 2019, would be calculated by increasing the one year permit fee specified in (a) of the relevant item of the table by the WPI formula under regulation 346, and then multiply the result by three. Note that the resulting fee amount for a three year permit would not then also be subject to regulation 346 (only the fees for a one year permit, listed under each item in paragraph (a), would be subject to regulation 346).

Item 2

15. Item 2 repeals subregulation 346(1) and replaces it with a new provision. This provision states that regulation 346 applies to a fee that is specified in paragraph (a) of an item of the table in subregulations 343(1) and 344(1), and that is in force on 30 September of a calendar year. The provision also states that regulation 346 applies to an increase in that fee that takes effect on or after 1 January 2019.

16. This regulation has the effect that only the fees specified in paragraph (a) of the tables specified in subregulations 343(1) and 344(1) are subject to the application of the WPI formula under regulation 346. Currently regulation 346 applies to all application fees specified under regulations 343 and 344, meaning that both one year permit application fees and two year permit application fees are subject to the WPI increase formula under regulation 346. This has meant that fee amounts are not exact multiples of each other.
17. The amendment to subregulation 346(1) ensures that the two and three year application fee amounts are exact multiples of the one year licence and permit application fees, which makes the fee structure more understandable and transparent to applicants. This change also simplifies the administrative application of the WPI calculation.

Item 3

18. Item 3 inserts into Part 10 of the Principal Regulations an application provision which clarifies that the Regulations only apply to applicants who have submitted an application on or after the date of commencement of the Regulations. The Regulations do not apply to applications that have already been made (and the accompanying fee paid) in the period between 1 January 2018 and the commencement of the Regulations. Only applications made after the Regulations commence are subject to the new fee amounts.